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## Aff: International Law

### Texas system violates international law

Nicole Allan, Associate editor Atlantic, July 6 2011, In Texas, a Death Penalty Showdown With International Law, http://www.theatlantic.com/international/archive/2011/07/in-texas-a-death-penalty-showdown-with-international-law/241480/

Humberto Leal Garcia, Jr. is a Mexican citizen who was sentenced to death by a Texas jury in 1994 for rape and murder. Texas provided Garcia with court-appointed lawyers, but at no point during his arrest or trial did the state inform him of his right to contact the Mexican consulate, which could have provided him legal aid. This right is guaranteed by the Vienna Convention on Consular Relations, signed by the U.S., Mexico, and 171 other nations. In its treatment of Garcia, Texas was in violation of international law. Whether or not Garcia's sentencing would have been different with the help of Mexican lawyers, Texas's decision puts the U.S. in a difficult position abroad -- many worry that, if we do not respect the consular rights of foreign nationals, other countries will have less incentive to respect those of our citizens.

### Texas system thwarts international law

Nicole Allan, Associate editor Atlantic, July 6 2011, In Texas, a Death Penalty Showdown With International Law, http://www.theatlantic.com/international/archive/2011/07/in-texas-a-death-penalty-showdown-with-international-law/241480/

Texas's commitment to its sentencing, meanwhile, signals the fundamental distaste many Americans seem to feel for international governance. Last year's Tea Party wave ushered in a series of state legislature attempts to ban the application of foreign legal codes and international mandates in U.S. courts. Though most of these measures did not pass, they provided a rallying point in many conservative circles. As Governor Perry contemplates a run for the Republican presidential nomination, a high-profile rejection of the international community and the Obama administration may be one of his most powerful assets. The Garcia case has also revealed an uncomfortable truth about international law -- while often influential, its scope is fundamentally limited, especially in the U.S. When the ICJ directly instructed Texas to change its policies, the state refused, and the Supreme Court sided with Texas over its international cousin. In principle, even-handed arbitration of international disputes sounds reasonable. But, in practice, geopolitics -- and, sometimes, domestic politics -- win the day. After all, the U.S. has so far been able to brush aside the Vienna Convention without sacrificing its own interests.

### Texas death penalty undermines US commitment to international law

Nicole Allan, Associate editor Atlantic, July 6 2011, In Texas, a Death Penalty Showdown With International Law, http://www.theatlantic.com/international/archive/2011/07/in-texas-a-death-penalty-showdown-with-international-law/241480/

With Texas barreling toward another execution on Thursday, Congress will not be able to intervene in time for Garcia. Last Friday, the Obama administration asked the Supreme Court to stay the execution until Congress had time to vote on legislation that would require states to comply with the Vienna Convention, thus obligating Texas to reevaluate Garcia's case. Solicitor General Donald Verrilli, Jr. stressed the diplomatic implications of the execution -- that compliance with international treaties helps the U.S. protect its citizens abroad and advance its foreign policy interests. Backtracking on a major global agreement, some worry, could puncture U.S. integrity in future international negotiations, potentially making other countries less willing to sign onto treaties they fear the U.S. may not honor.

## Aff: Death Row Is Inhumane

### Death row conditions are inhumane

Dave Mann, Texas Observer, November 10, 2010, Solitary Men, <http://www.texasobserver.org/cover-story/solitary-men>

IMAGINE SPENDING 23 HOURS A DAY IN A CEMENT ENCLOSURE the size of a bathroom. Now imagine sitting in that small room nearly all day, every day without respite, for a year, five years, even 10 years. How long before you become restless and lonely? How long before you start pacing and talking to yourself? How long before you lose your mind? For more than 300 inmates on Texas' death row, these aren’t hypothetical questions. Their lives are confined to 60-square-foot cells in which they languish 23 hours a day, alone in a featureless room, behind a solid steel door, cut off not only from what they call “the free world,” but from nearly everyone. Inmates endure this isolation an average of 10 years—though some have been on death row more than 30—until their appeals are exhausted and their sentences are commuted or carried out. Or until they’re killed by disease, old age or another inmate. Or until they kill themselves.

### Texas death row conditions are the worst in the country

Dave Mann, Texas Observer, November 10, 2010, Solitary Men, <http://www.texasobserver.org/cover-story/solitary-men>

Texas has perhaps the harshest death row conditions in the country. Most states keep death row prisoners in permanent solitary confinement. But Texas is one of two states—Oklahoma is the other—that doesn’t allow death row inmates to watch television, according to a survey by the Northwestern University Law School. Eleven states permit contact visits with death row prisoners. In Texas, contact visits are never allowed.

### These conditions are torture

Dave Mann, Texas Observer, November 10, 2010, Solitary Men, <http://www.texasobserver.org/cover-story/solitary-men>

Death row isn’t designed to be pleasant. These are dangerous men. It’s still a maximum-security prison. But a growing body of research suggests this kind of extreme isolation amounts to torture.

Prolonged isolation can ravage the psyche—causing or exacerbating mental illness. A 2003 study of the isolation unit at California’s Pelican Bay prison by Craig Haney, a psychologist at the University of California-Santa Cruz, reports that two-thirds of inmates in solitary confinement talk to themselves and nearly half suffered from “perception disorders, hallucinations, or suicidal thoughts.” Research by Stuart Grassian, a Boston psychologist who has interviewed hundreds of prisoners, found that about one-third of inmates in solitary confinement develop severe mental illness. These same effects have cropped up in military prisons. Of all the U.S. “enhanced interrogation” techniques utilized on detainees in Iraq and Afghanistan, the most devastating were psychological; prolonged isolation and blaring music eroded prisoners’ sanity.

## Aff: Death Row Conditions Unbearable

### Texas death row conditions cause mental anguish and disorders

Dave Mann, Texas Observer, November 10, 2010, Solitary Men, <http://www.texasobserver.org/cover-story/solitary-men>

Anecdotal evidence suggests quite a few death row inmates in Texas suffer from mental illness. Two of the five longest-serving inmates—each has been on death row more than 30 years—are suffering from documented mental disorders. The number of suicides on death row has increased since Texas placed inmates in solitary confinement. Since 2004, five inmates have killed themselves on death row—more suicides than in the previous 25 years (from 1974 to 1999, four death row inmates committed suicide, according to agency figures). While suicides are still unusual, solitary confinement wears down nearly all inmates. Rob Owen, who directs the Capital Punishment Clinic at the University of Texas Law School, has represented many inmates on death row. When he visits clients, he can see the effects of prolonged isolation. “They have to warm up,” he says. “At first, they’re withdrawn and quiet, and I think that’s because of the isolation.”

### Death row inmates subject to extreme isolation

Chris McGreal, The Guardian, November 15, 2009, Texas death row man claims inmates' numbered days are form of torture <http://www.guardian.co.uk/world/2009/nov/15/texas-death-row-danielle-simpson>

"We spend 22 or 23 out of 24 hours in a cell that's very small. We don't have no TVs. We're the only death row that don't have TVs or work programmes or religious stuff. They don't let us have none of that here," said Simpson. "The cells are broken. Whenever it rains, leaks come through window seals or cracks up in the ceiling. It messes up legal work, clothes, commissary. Once it gets damp, that's it. They know about it but they don't want to come out and fix it." Death row prisoners have regularly gone on hunger strike over bad food, over sleep deprivation because of the unending noise created by living inside a network of steel cages, and over the alleged brutality of guards, including the regular use of pepper spray. Hardest of all is the interminable solitary confinement. There is no physical contact with other prisoners, although Simpson can communicate with them by shouting.

### Death row conditions cause severe mental anguish

Chris McGreal, The Guardian, November 15, 2009, Texas death row man claims inmates' numbered days are form of torture <http://www.guardian.co.uk/world/2009/nov/15/texas-death-row-danielle-simpson>

Intentional or not, some lawyers for the condemned say they have watched the mental state of their clients deteriorate sharply on death row. Some inmates withdraw completely, refusing to shower or leave their cells for recreation. Others fight back with court appeals and by writing to supporters with angry and bitter accounts of imprisonment and what they often characterise as the injustice of their situation. They are trying to save their lives, not only through a mostly futile effort to overturn a death sentence but by staying sane through the years of isolation.

## Aff: Death Penalty Racist

### African Americans are much more likely to be executed in Texas

Allan Turner, Houston Chronicle, May 1, 2008, Study implies racism affects death penalty in Harris Co. <http://www.chron.com/news/houston-texas/article/Study-implies-racism-affects-death-penalty-in-1769251.php>

A new study on how race affects the way death penalty cases are handled in Harris County, the so-called "capital of capital punishment," finds that black offenders are more likely than whites to be placed on trial for their lives, even when their crimes are relatively less heinous. In the study, to be published in the fall issue of Houston Law Journal, University of Denver sociology professor Scott Phillips concludes that black defendants are 1.75 times more likely to face the death penalty at trial and 1.49 times more likely to be sentenced to die. Phillips also found that prosecutors were less likely to seek the death penalty in capital-eligible cases in which the victims were black.

### This disparity ensures inequality

Allan Turner, Houston Chronicle, May 1, 2008, Study implies racism affects death penalty in Harris Co. <http://www.chron.com/news/houston-texas/article/Study-implies-racism-affects-death-penalty-in-1769251.php>

A closer examination of the cases, Phillips said, showed that while blacks and whites were subject to capital prosecution at about the same rate, blacks in many cases had committed less heinous crimes.

Statistics showed they were less likely to have committed murders involving burglary, kidnapping or rape, committed murder by beating, stabbing or asphyxiating, or murdered victims who were vulnerable due to age or murdered women. "The bar appears to have been set lower for pursuing death against black offenders," Phillips wrote. " ... To impose equal punishment against unequal crimes is to impose unequal punishment."

### Race is most important factor in death penalty process

Gloria Rubac, May 10, 2007, Racism, resistance and the death penalty <http://www.workers.org/2007/us/death-penalty-0517/>

The one factor that most determines whether a defendant will be sentenced to death is the race of the person killed. Even though Black and white people are murdered in nearly equal numbers, 80 percent of people executed since the death penalty was reinstated in 1976 had cases involving white victims.Only 14 white people have ever been executed for the murder of a Black person, while 215 Black people have been executed for killing whites. Conversely, white women represent only 0.8 percent of murder victims—yet 35 percent of those executed since 1976 were sentenced to die for killing a white woman. The over-all picture of capital punishment shows nationality involved at every turn. If a white person is murdered, whether the defendants are Black or white, they are at least five times more likely to be given the death penalty than if a Black person is murdered. African Americans are the least likely to serve on capital juries but the most likely to be condemned to die. In Texas, racism in the criminal justice system was openly practiced until recently. Defense attorneys in Dallas remember that until the mid-1980s so-called Black-on-Black murders were known around the courthouse as “misdemeanor murder.” Attorney Fred Tinsley reported in 2000, “At one point, with a Black-on-Black murder, you could get it dismissed if the defendant would just pay funeral expenses.”

## Aff: Death Penalty Does Not Deter Crime

### Studies indicating deterrent effect of death penalty are flawed

Adam Liptak, New York Times, November 18, 2007 Does Death Penalty Save Lives? A New Debate, <http://www.nytimes.com/2007/11/18/us/18deter.html?pagewanted=all>

The studies have been the subject of sharp criticism, much of it from legal scholars who say that the theories of economists do not apply to the violent world of crime and punishment. Critics of the studies say they are based on faulty premises, insufficient data and flawed methodologies. The death penalty “is applied so rarely that the number of homicides it can plausibly have caused or deterred cannot reliably be disentangled from the large year-to-year changes in the homicide rate caused by other factors,” John J. Donohue III, a law professor at Yale with a doctorate in economics, and Justin Wolfers, an economist at the University of Pennsylvania, wrote in the Stanford Law Review in 2005. “The existing evidence for deterrence,” they concluded, “is surprisingly fragile.” Gary Becker, who won the Nobel Prize in economics in 1992 and has followed the debate, said the current empirical evidence was “certainly not decisive” because “we just don’t get enough variation to be confident we have isolated a deterrent effect.”

### Deterrence studies are inaccurate

Jeffrey Fagan, Professor Columbia Law School, January 21, 2005 DETERRENCE AND THE DEATH PENALTY: A CRITICAL REVIEW OF NEW EVIDENCE. <http://www.deathpenaltyinfo.org/FaganTestimony.pdf>

The mistake in the enterprise of deterrence research is the attempt to make causal inferences from a very flawed and limited set of observational data. One cannot treat these data as an experiment, where all the competing influences are ruled out by randomly assigning states to specific conditions. Murder is a complex and multiply determined phenomenon, with cyclical patterns for over 40 years of distinct periods of increase and decline that are not unlike epidemics of contagious diseases. There is no reliable, scientifically sound evidence that execution can exert an effect that either acts separately and sufficiently powerfully to overwhelm these consistent and recurring epidemic patterns. This body of work, based on infrequent capital punishment, its geographical spread across a large nation with little publicity, and the omission of numerous competing but untested explanation of homicide changes, fails to provide a reliable much less a dispositive test of deterrence of murder. To accept it uncritically invites errors that have the most severe human costs.

### **Deterrence is false**

Casey Stubbs, Huffington Post, June 18, 2007, The Death Penalty Deterrence Myth: No Solid Evidence That Killing Stops The Killing <http://www.huffingtonpost.com/cassy-stubbs/the-death-penalty-deterre_b_52622.html>

Among the many factors in the debate about the death penalty is whether capital punishment deters violent crime. Although solid research indicates that there is no valid evidence of such deterrence, recent attention has been given to a few flawed studies concluding that the death penalty does deter murder. A June 10 Associated Press article pointed to statistical studies that claimed to directly link numbers of executions with numbers of murders prevented, including a 2003 study from the University of Colorado at Denver and studies from 2003 and 2006 by researchers at Emory University. But follow-up studies by top social scientists soundly reject those conclusions as well as the flawed methodology used to reach them. Jeffrey Fagan, a professor at Columbia Law School and an expert on statistics, testified to Congress that the Emory and Denver studies were "fraught with numerous technical and conceptual errors," and "fail[ed] to reach the demanding standards of social science."

## Aff: Lethal Injection Drug is Unethical

### Lethal injection drug use is unethical

American Civil Liberties Union, March 2011, REGULATING DEATH IN THE LONE STAR STATE: Texas Law Protects Lizards from Needless Suffering, But Not Human Beings <http://www.aclu.org/files/assets/Regulating_Death_in_the_Lone_Star_State_2011-03-31.pdf>

Texas’ lax attitude regarding the taking of human life contrasts sharply with its enactment of detailed regulations to ensure that animals suffer no pain when they are euthanized. Animal euthanasia laws provide strict certification requirements for euthanasia technicians and regulate acceptable methods of intravenous euthanasia down to the correct dosage per kilogram of an animal’s body weight. By contrast, the Texas legislature has failed to enact any legislation to ensure that the individuals responsible for extinguishing human life are properly trained and qualified, and that the drugs they administer are both effective and humane. Instead, the legislature has left the lethal injection protocol to the discretion of the director of the Correctional Institutions Division of the TDCJ – a prison official with no medical training. In Texas, men and women are put to death not under the supervision of doctors and anesthesiologists—or even licensed veterinarians—but at the hands of a prison lethal injection team whose medical training is limited. It is no exaggeration to say that Texas regulates the euthanasia of reptiles more strictly than the execution of human beings.

### Drug used in Texas executions is prohibited from being used on animals

Raymond Bonner, Correspondent for New York Times, April 5, 2011, In Texas, a Brave, New Lethal Injection, Atlantic, <http://www.theatlantic.com/national/archive/2011/04/in-texas-a-brave-new-lethal-injection/236800/>

Texas prison officials are about to carry out an execution with a combination of drugs and procedures that they have not used before, and that a veterinarian is proscribed from using when terminating an animal's life. In order to minimize pain and suffering of animals being put to sleep, Texas has adopted detailed regulations. Only a licensed veterinarian may administer the drugs, the dosage is determined by the animal's weight, and even the lighting in the room is regulated by law. When it comes to carrying out executions of death-row inmates, however, the state does not take the same care. The Texas legislature has given the director of the Texas Department of Criminal Justice the absolute power to decide on the drugs used and how they will be administered. The current director is a former corrections officer with no training in anesthesiology, pharmacology, or science. "Death-row inmates appear to have fewer rights than domesticated animals," concludes a study released on Sunday, "Regulating Death in the Lone Star State: Texas Law Protects Lizards from Needless Suffering, But Not Human Beings" (PDF). The 10-page report was written by the ACLU of Texas, the ACLU Capital Punishment Project, and the Center for International Human Rights at Northwestern University School of Law.

### The pain would qualify as torture under Texas law

American Civil Liberties Union, March 2011, REGULATING DEATH IN THE LONE STAR STATE: Texas Law Protects Lizards from Needless Suffering, But Not Human Beings <http://www.aclu.org/files/assets/Regulating_Death_in_the_Lone_Star_State_2011-03-31.pdf>

Pain and suffering of this degree violates article 43.24 of the Texas Code of Criminal Procedure, which states, “No torture, or ill treatment, or unnecessary pain, shall be inflicted upon a prisoner to be executed under the sentence of the law.” Nevertheless, Texas continues to run the risk that inmates will be conscious when the potassium chloride reaches their vein.

## Aff: Lethal Injection Drug Unethical

### Combination of drugs is torturous

American Civil Liberties Union, March 2011, REGULATING DEATH IN THE LONE STAR STATE: Texas Law Protects Lizards from Needless Suffering, But Not Human Beings <http://www.aclu.org/files/assets/Regulating_Death_in_the_Lone_Star_State_2011-03-31.pdf>

In states such as Texas, the three-drug lethal injection protocol is administered by staff who are not trained anesthesiologists. Moreover, Texas law fails to set forth dosage-to-weight guidelines for the administration of anesthesia, and does not require effective measures to ensure prisoners are anesthetized at the moment of death. These circumstances give rise to a real risk that the anesthesia will fail to produce unconsciousness at the time the second and third drugs are administered. The second drug in the three-drug protocol is pancuronium bromide, a paralytic that causes asphyxiation, which is both painful and terrifying to a conscious person. The nature of the paralysis induced by pancuronium bromide means that members of a lethal injection drug team with limited medical training will find it almost impossible to know if the anesthesia is working. TDCJ procedures allow drug team members to proceed immediately with the administration of potassium chloride “if the condemned individual exhibits no visible sign of being awake,” a test that makes little sense if the individual is paralyzed and unable to move or even blink. Worse, the paralytic effects of the pancuronium bromide would mask the suffering felt by a conscious prisoner during the administration of the final drug in the protocol, potassium chloride, which causes cardiac arrest and is excruciatingly painful when injected intravenously.

### The pain of the drugs used is excruciating

American Civil Liberties Union, March 2011, REGULATING DEATH IN THE LONE STAR STATE: Texas Law Protects Lizards from Needless Suffering, But Not Human Beings <http://www.aclu.org/files/assets/Regulating_Death_in_the_Lone_Star_State_2011-03-31.pdf>

The pain and suffering that an inmate would experience if not properly anesthetized is extreme. Because pancuronium is a paralytic that restricts the ability of the respiratory muscles to contract, it causes asphyxiation. The third drug, potassium chloride, causes excruciating pain that has been likened to the feeling of having one’s veins set on fire. Experts who have testified in lethal injection cases have unanimously agreed that it would be unconscionable to inject either drug into a person who was not anesthetized.

### Lethal injection is torture

Human Rights Watch, April 2006, So Long as They Die <http://www.hrw.org/sites/default/files/reports/us0406webwcover.pdf>

Although supporters of lethal injection believe the prisoner dies painlessly, there is mounting evidence that prisoners may have experienced excruciating pain during their executions. This should not be surprising given that corrections agencies have not taken the steps necessary to ensure a painless execution. They use a sequence of drugs and a method of administration that were created with minimal expertise and little deliberation three decades ago, and that were then adopted unquestioningly by state officials with no medical or scientific background. Little has changed since then. As a result, prisoners in the United States are executed by means that the American Veterinary Medical Association regards as too cruel to use on dogs and cats.

## Aff: Execution Process is Unethical

### There is no training for executioners in Texas which ensures suffering

American Civil Liberties Union, March 2011, REGULATING DEATH IN THE LONE STAR STATE: Texas Law Protects Lizards from Needless Suffering, But Not Human Beings <http://www.aclu.org/files/assets/Regulating_Death_in_the_Lone_Star_State_2011-03-31.pdf>

Under the Texas execution protocol, the members of the execution team receive little training. Before new team members can participate in executions “without the direct supervision of existing team members,” they have to “follow[] the drug team through at least two executions” and participate in “at least two executions under the direct supervision of existing team members.” The lack of rigorous training requirements for members of the execution team, who are not required by law to have any prior experience in the administration of anesthesia, is remarkable when contrasted with the strict provisions governing the training of technicians and veterinarians involved in animal euthanasia. In short, men and women may die at the hands of an executioner who lacks the training and experience to minimize suffering or even determine if the anesthesia is working.

### Lack of oversight violates prisoners’ rights

American Civil Liberties Union, March 2011, REGULATING DEATH IN THE LONE STAR STATE: Texas Law Protects Lizards from Needless Suffering, But Not Human Beings <http://www.aclu.org/files/assets/Regulating_Death_in_the_Lone_Star_State_2011-03-31.pdf>

The Texas legislature’s hands-off approach to the taking of human life stands in marked contrast to its proactive approach to the taking of animal life. Texas statutes subject the animal euthanasia process to rigorous oversight, regulation, and training requirements in order to make the procedures more humane. Condemned human beings in the state must rely on a procedure implemented by bureaucratic fiat to safeguard their rights and prevent needless pain and suffering during the execution process. In sum, the manner in which Texas carries out the execution of human beings is riskier, less transparent, and has less oversight than the euthanasia of cats, dogs, birds, and lizards. We call on the Texas Board of Pardons and Paroles, Governor Rick Perry, and the courts to stay pending executions until the legislature enacts measures that provide at least the same protections to human beings condemned to die as are provided to sick or unwanted animals. At the same time, the Texas legislature and judiciary should require TDCJ to subject its lethal injection protocol to public scrutiny and expert assessment to ensure that executions are carried out in such a way as to minimize human suffering.

### Texas has no regulations on drugs used in lethal injections

Raymond Bonner, Correspondent for New York Times, April 5, 2011, In Texas, a Brave, New Lethal Injection, Atlantic, <http://www.theatlantic.com/national/archive/2011/04/in-texas-a-brave-new-lethal-injection/236800/>

When it comes to putting animals to sleep, pentobarbital is not an appropriate anesthetic in combination with pancuronium bromide and potassium chloride, according to guidelines by the American Veterinary Medical Association. Thus, "veterinarians in Texas are prohibited from using the combination of drugs that the Texas Department of Criminal Justice has deemed suitable for the execution of human beings," the report by the Northwestern University law students says. "It is no exaggeration to say that Texas regulates the euthanasia of reptiles more strictly than the execution of human beings," the report concludes.

## Aff: Lack of Legal Protection

### Lack of transparency in execution method eliminates rights of inmates

American Civil Liberties Union, March 2011, REGULATING DEATH IN THE LONE STAR STATE: Texas Law Protects Lizards from Needless Suffering, But Not Human Beings <http://www.aclu.org/files/assets/Regulating_Death_in_the_Lone_Star_State_2011-03-31.pdf>

This lack of transparency exacerbates concerns regarding the source and quality of the new drug. The Food and Drug Administration states that it “does not review or approve products for the purpose of lethal injection,” and that it will not review shipments of lethal injection drugs “to determine their identity, safety, effectiveness, purity, or any other characteristics.” Without any meaningful federal or state oversight, and at the mercy of an institution that has provided no evidence that its execution protocol minimizes the risk of human suffering, death row inmates appear to have fewer rights than domesticated animals.

### Lack of habeas review denies Constitutional protections

Steven B. Bright, Lecturer Yale Law School, 2000, Elected Judges and the Death Penalty in Texas:

Why Full Habeas Corpus Review by Independent Federal Judges Is Indispensable to Protecting Constitutional Right <http://www.schr.org/files/resources/texas.pdf>

Carrying out over two hundred executions in the last twenty years, Texas has dramatically demonstrated that the Bill of Rights—particularly, the most fundamental right, the right to counsel—cannot be left in the hands of partisan elected judges. The Texas judiciary has responded to the clamor for executions by processing capital cases in assembly-line fashion with little or no regard for the fairness and integrity of the process. In doing so, it has shown the need for full habeas corpus review by inde-pendent, life-tenured federal judges. However, the once “Great Writ” of habeas corpus barely survives the restrictions put on it by the Supreme Court and Congress. As a result, those most in need of the protection of the Constitution—the “helpless, weak, outnumbered . . . victims of prejudice and public excitement”—often do not receive it, even in cases where their lives are at stake.

### Capital defendants are denied access to quality legal representation

Steven B. Bright, Lecturer Yale Law School, 2000, Elected Judges and the Death Penalty in Texas:

Why Full Habeas Corpus Review by Independent Federal Judges Is Indispensable to Protecting Constitutional Right <http://www.schr.org/files/resources/texas.pdf>

Texas trial judges—some treating the appointment of counsel to defend poor defendants as political patronage and some assigning lawyers not to provide zealous advocacy but to help move their dockets

—have frequently appointed incompetent lawyers to defend those accused of capital crimes. In 1999, trial judges successfully persuaded the governor to veto legislation that would have made modest

improvements in the legal representation of poor defendants. The state’s highest criminal court, the Texas Court of Criminal Appeals, has upheld death sentences even in cases in which defense lawyers slept through trial. In one such case, however, a federal court did grant habeas corpus relief, finding that “sleeping counsel is the equivalent to no counsel at all.” In another case, after the Texas courts had upheld a conviction and death sentence based only on affidavits, a federal court held an evidentiary hearing, made credibility findings, and granted relief to a condemned woman whose lawyer was actively representing another participant in the crime who testified against her.

## Aff: No Legal Protections

### Texas legal system offers no legal protections

Steven B. Bright, Lecturer Yale Law School, 2000, Elected Judges and the Death Penalty in Texas:

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Many people condemned to die in Texas have no access to competent lawyers to represent them in post-conviction challenges to their convictions and sentences. During a four-year period when it was responsible for appointing lawyers to represent the condemned in post-conviction review, the Court of Criminal Appeals repeatedly appointed lawyers who were incapable of preparing petitions and filing them on time. It then punished the inmates for the incompetence of their lawyers by denying them relief over dissents that characterized the court’s review as a “farce,” “travesty,” and “charade,” and “border[ing] on barbarism.” In one case, a federal judge found that the appointment of an inexperienced lawyer with serious health problems to represent a condemned man “constituted a cynical and reprehensible attempt to expedite [the] execution at the expense of all semblance of

fairness and integrity” and sent the case back to the state courts for review.

### Lack of review ensures innocent people being sentenced

Steven B. Bright, Lecturer Yale Law School, 2000, Elected Judges and the Death Penalty in Texas:

Why Full Habeas Corpus Review by Independent Federal Judges Is Indispensable to Protecting Constitutional Right <http://www.schr.org/files/resources/texas.pdf>

Texas—which, unlike Illinois, does not have a statewide public defender system at the trial level—many death row inmates never have their case reviewed by a competent lawyer, filmmaker, journalist, or journalism class. As a result, wrongful convictions, constitutional violations, and other serious injustices may never come to light and be remedied. Yet, despite the role that federal habeas corpus review has played in freeing the innocent and vindicating egregious violations of the right to counsel and other constitutional protections ignored by state courts, the Supreme Court has erected numerous barriers to federal habeas corpus review. The Court has also adopted a standard for the effectiveness of counsel that some courts construe as guaranteeing nothing more than a warm body with a bar card beside the accused at the counsel table. Congress restricted habeas corpus review eve more in the Antiterrorism and Effective Death Penalty Act of 1996, which, among other things, imposed a statute of limitations on petitions for habeas corpus relief.

### Texas system denies legal assistance to indigent persons

Steven B. Bright, Lecturer Yale Law School, 2000, Elected Judges and the Death Penalty in Texas:

Why Full Habeas Corpus Review by Independent Federal Judges Is Indispensable to Protecting Constitutional Right <http://www.schr.org/files/resources/texas.pdf>

By assigning incapable lawyers to defend the poor at trial and equally incapable lawyers to represent the condemned in the post-conviction process, Texas provides only a blurry appearance of fairness. But too often, the reality is no reliable adversarial process at all. While the legislature, the bar, the governor, and others all share the blame for the poor quality of representation in capital cases in Texas, the state's judges—who have taken an oath to uphold the Constitution, including the Sixth Amendment’s guarantee of counsel—have not only tolerated bad representation, but, by appointing incompetent lawyers, frequently have been directly responsible for it. The role of judges in appointing bad lawyers and swiftly processing capital cases has further diminished the reputation of the Texas judiciary, which has long been tarnished by campaign contributions to judicial candidates from groups that have cases before the courts.

## Aff: Legal Process Unjust

### System denies protection to the poor

Steven B. Bright, Lecturer Yale Law School, 2000, Elected Judges and the Death Penalty in Texas:

Why Full Habeas Corpus Review by Independent Federal Judges Is Indispensable to Protecting Constitutional Right <http://www.schr.org/files/resources/texas.pdf>

Texas has neither an independent judiciary nor an adequate system for providing representation to the poor. As a result, the process by which poor people are condemned to death is often a farce, a mockery, and a disgrace to the legal system and the legal profession. The Texas judiciary, responding to the perceived will of the state’s voters, instead of protecting rights, is not only ignoring constitutional violations, as so many elected judges must do in order to stay in office. It is actively engaged in denying rights to people by providing them grossly inadequate legal representation. An accused may stand virtually defenseless facing the death penalty as his lawyer naps at a trial that is in no way adversarial, and then be denied any post-conviction review because his lawyer misses a deadline or fails to raise any issues. The courts, as Judge Overstreet warned, have blood on their hands.

### Lack of public defenders denies legal representation to poor in capital trials

Ned Walpin, PBS Frontline, 2000, Why is Texas #1 in Executions? <http://www.pbs.org/wgbh/pages/frontline/shows/execution/readings/texas.html>

Texas does not have a public defender system for indigent defendants, and instead relies upon court-appointed lawyers who likely do not have experience in capital murder defenses or appeals. Newton notes that incompetent defenses in capital murder cases are legion in Texas, and that, even in a death penalty appeal, bad lawyering is hard to prove. One decision, which turned down a defendant's habeas appeal due to bad lawyering, concluded that "[t]he Constitution does not say that the lawyer has to be awake" during trial proceedings. Furthermore, Texas was not obliged to provide lawyers free of charge to post-conviction habeas appeals until September 1, 1995, and the amount the state is willing to pay lawyers for these appeals is sufficiently low that most defendants still do not receive counsel for their appeals.

### Elected appellate judges results in unjust decisions

Ned Walpin, PBS Frontline, 2000, Why is Texas #1 in Executions? <http://www.pbs.org/wgbh/pages/frontline/shows/execution/readings/texas.html>

Texas' appellate judges are elected to office and hence serve according to the pleasure of the public. Not surprisingly, they require a record of toughness on criminals in order to win re-election. Also, there are many indications that elected appellate judges generally are of a lesser quality than their appointed counterparts in other states. Newton even claims that these elected judges do not carefully consider the complexities of each specific death penalty case. As evidence, Newton argues that "[e]specially during the past few years...the Texas Court of Criminal Appeals has refused to publish most of its decisions in death penalty cases, including many cases that discuss important issues of first impression. Often these opinions take positions entirely inconsistent with prior decisions by the court and fail to mention the conflict. Generally speaking, there is a hit-and-mostly-miss quality in the Court of Criminal Appeals' death penalty decisions. Only a few judges during the past decade have been capable of or willing to write thoughtful, scholarly decisions, whether granting or denying relief." Additionally, Newton notes that these judges tend to dismiss habeas corpus appeals even in cases where there appears to be glaring unanswered questions about the defendant's guilt.

## Aff: Death Penalty Racist

### Death penalty applied overwhelmingly against African Americans

David Dow, Professor University of Houston Law, NY Times July 31, 2011, David Dow: Death Penalty, Still Racist and Arbitrary

Nationwide, blacks and whites are victims of homicide in roughly equal numbers, yet 80 percent of those executed had murdered white people. Over the past three decades, the Baldus study has been replicated in about a dozen other jurisdictions, and they all reflect the same basic racial bias. By insisting on direct evidence of racial discrimination, the court in McCleskey essentially made the fact of pervasive racism legally irrelevant, because prosecutors rarely write e-mails announcing they are seeking death in a given case because the murderer was black (or because the victim was white). In Texas, though, they do come close. In 2008, the district attorney of Harris County, Chuck Rosenthal, resigned after news emerged that he had sent and received racist e-mails. His office had sought the death penalty in 25 cases; his successor has sought it in 7. Of the total 32 cases, 29 involve a nonwhite defendant. Since 1976, Texas has carried out 470 executions (well more than a third of the national total of 1,257). You can count on one hand the number of those executions that involved a white murderer and a black victim and you do not need to use your thumb, ring finger, index finger or pinkie.

## Aff: Legal Process Unjust

### Counsel in death row cases are unqualified

Gloria Sasser, League of Women Voters Texas, 2002, Facts & Issues CRIMINAL JUSTICE: Capital Punishment <http://www.lwvtexas.org/pdf_files/IS_CapPun.pdf>

A recent Dallas Morning News article reported that trial lawyers who had represented Texas death row inmates had been disciplined at approximately eight times the rate of lawyers as a whole, and that nearly one in four condemned prisoners had been represented at trial or on appeal by court-appointed counsel who had been disciplined for professional misconduct at some point in their careers.

### Texas law unfairly limits habeas corpus appeals for death row inmates

Gloria Sasser, League of Women Voters Texas, 2002, Facts & Issues CRIMINAL JUSTICE: Capital Punishment <http://www.lwvtexas.org/pdf_files/IS_CapPun.pdf>

The law adopted a “unitary” appeals process that requires the direct appeal and state habeas corpus proceedings to take place concurrently and shortens the time period for seeking habeas relief. A convicted person is generally limited to only one application of habeas corpus. At the conclusion of the simultaneous processes, the death-row inmate has access to only limited federal relief. James C. Harrington and Anne Moore Burnham argue, “Although the habeas corpus process prior to the enactment of Article 11.071 was long and tedious, it allowed persons who were wrongly convicted and sentenced to death sufficient time to acquire the evidence needed to prove their innocence.” The new concurrent process shortens that time frame, and, as a result, may promote the execution of some innocent persons. In addition, the new procedure effectively precludes the convicted person from raising standard points of reversal of appeal during the habeas process, including ineffectiveness of counsel, a violation of a constitutional right, or other error, rising during the direct appeal.

### Lawyers are unqualified

Human Rights Watch, March 2001, “The Miscarriage of Justice: Mental Retardation and Capital Trials

It is well documented that many capital defendants receive inadequate counsel, often because courts appoint attorneys for the indigent who are too inexperienced, overworked, or uninterested to do an effective job. As a result, numerous death penalty cases are marred by serious errors: a recent comprehensive examination of thousands of death penalty cases during the past three decades, undertaken by Columbia University professors at the request of the chair of the Senate Judiciary Committee, found that appeals courts identified prejudicial, reversible errors in sixtyeight percent of all capital cases they reviewed. Aside from deliberate police or prosecutorial misconduct (e.g., withholding exculpatory evidence), the most common cause of serious error in capital cases is “egregiously incompetent” defense lawyers. Similarly, the Dallas Morning News reported that of 461 death row inmates in Texas, fully one quarter had been represented by attorneys who had been reprimanded, placed on probation, suspended, or disbarred by the Texas Bar Association.

## Aff: Innocent Persons Sentenced

### Innocent persons are likely to be sentenced

Gloria Sasser, League of Women Voters Texas, 2002, Facts & Issues CRIMINAL JUSTICE: Capital Punishment <http://www.lwvtexas.org/pdf_files/IS_CapPun.pdf>

Since 1973, seven Texas death row inmates have been released from prison due to wrongful conviction. In addition to inadequate representation, studies have identified several other causes of wrongful convictions in death penalty cases, including faulty expert testimony, questionable forensic testimony, and reliance on eyewitnesses, uncorroborated co-defendants, and testimony from fellow criminals and others who can benefit from assisting the prosecution. Prosecutors and defense lawyers often rely on physical evidence such as hair and blood samples, ballistics, bite marks, shoeprints, fingerprints, and DNA testing. Out-dated technology, untrained technicians, and under-funded laboratories can lead to faulty test results. The qualifications and effectiveness of the persons presenting the evidence in court can vary greatly. Eyewitnesses to crimes may have faulty vision or memory (or both). Yet, reliance on a single eyewitness may be the only ground for conviction even in capital trials. The testimony of codefendants and others who can benefit from assisting the prosecution is suspect because of possible conflicts of interest.

### Innocent persons are likely to be executed

Houston Chronicle, January 2, 2011 The death penalty: It's time for capital punishment to become Texas history <http://www.chron.com/opinion/editorials/article/The-death-penalty-It-s-time-for-capital-1692445.php>

The death penalty in Texas is fraught with demonstrable error, and the people of the state seem more willing to deal with that fact than their leaders. Events of the past year have convinced us that defendants have been executed on the basis of invalid evidence. They may or may not have been guilty, but the fact that we have convicted people based on faulty evidence leads inexorably to a horrible likelihood — that we have executed innocent people. The high number of death row prisoners eventually exonerated makes a strong case that other innocent but less fortunate prisoners have been wrongfully put to death. We don't lose sleep over the execution of guilty murderers. But the possible or probable execution of the innocent should trouble every Texan.

### Life without parole is only way to prevent innocent persons from being killed

Houston Chronicle, January 2, 2011 The death penalty: It's time for capital punishment to become Texas history <http://www.chron.com/opinion/editorials/article/The-death-penalty-It-s-time-for-capital-1692445.php>

The accumulating evidence indicates that the current application of the death penalty in Texas involves an unacceptably high risk of killing innocent people. Yet even as the evidence of false convictions and wrongful executions piles up, only the participants at the base of the Texas criminal justice system, jury members, seem to be waking up to the reality of this evil. Some opponents have called for a moratorium on executions in Texas until new, unspecified safeguards are in place to protect the innocent. Yet it's difficult to imagine a fail-safe route to execution. Besides, we already have the ultimate safeguard on the books: the sentence of life without parole. Spending the rest of one's days in prison is as terrifying a deterrent to most people as quick execution. By ending state-sanctioned killing, in the future when a jury makes a mistake, resurrection won't be required to remedy it.

## Aff: Innocent Persons Sentenced

### Innocent persons will be executed

Texas Civil Rights Project, September 2000, THE DEATH PENALTY IN TEXAS Due Process and Equal Justice . . . or Rush to Execution? <http://www.texasmoratorium.org/rgraphics/DeathPenaltyReport.pdf>

The possibility of executing an innocent person, described by Illinois Governor George Ryan as “the ultimate nightmare,” is an alarmingly likely prospect in Texas. Even with the best of intentions, the criminal justice system makes errors. Poor representation, prosecutorial misconduct, racial bias, and even simple mistakes lead to erroneous convictions. And with record numbers of inmates filling death rows and severe restrictions placed on the appellate process, there is a real possibility that the mechanisms meant to catch erroneous convictions will break down even further. Following conviction, death row inmates face an uphill battle in convincing any tribunal that they are innocent. Once an execution occurs, the error is final.

### Lack of due process ensures innocent persons will be executed

Texas Civil Rights Project, September 2000, THE DEATH PENALTY IN TEXAS Due Process and Equal Justice . . . or Rush to Execution? <http://www.texasmoratorium.org/rgraphics/DeathPenaltyReport.pdf>

And there is reason to believe that the crisis of wrongful death penalty convictions has worsened. The Death Penalty Information Center reports that the annual average of innocent people released from death row has increased in recent year. Between 1973 and October 1993, there was an average of 2.5 convicted persons released. Since then, the average has increased to 4.8 individuals released per year, almost twice the previous pace. Moreover, while the number of prisoners on death row is increasing, opportunities to appeal and to raise newly discovered evidence of innocence have decreased dramatically, leading to a greater likelihood of mistakes. Nothing exists to show that Texas is in any better situation than the rest of the country. In Texas, the facts are as startling. Prior to 1995, for example, the Court of Criminal Appeals, the state’s highest criminal appellate court, reversed about one-third of death punishments. Since 1995, the court and laws have become much more restrictive, and the court has only granted eight new trials out of 278 capital punishment convictions (3%) -- one of the lowest rates in the country. This underlines rather starkly the quantum of error that exists in Texas death penalty procedures, which is especially alarming, given ever shrinking due process protections for death penalty defendants.

### High numbers on death row guarantees innocent people executed

Texas Civil Rights Project, September 2000, THE DEATH PENALTY IN TEXAS Due Process and Equal Justice . . . or Rush to Execution? <http://www.texasmoratorium.org/rgraphics/DeathPenaltyReport.pdf>

A 1993 report by the United States Congress House Subcommittee on Civil and Constitutional Rights, stated that “the most conclusive evidence that innocent people are condemned to death under modern death sentencing procedures comes from the surprisingly large number of people whose convictions have been overturned and who have been freed from death row” (emphasis added). Since reinstating the death penalty, 86 death row inmates have been exonerated in the United States. That amounts to one death row inmate freed for every seven who have been executed. Since 1972, seven innocent people have been set free from Texas death row.

## Aff: Inadequate Representation

### Lack of funding for counsel of indigent persons on death row

Texas Civil Rights Project, September 2000, THE DEATH PENALTY IN TEXAS Due Process and Equal Justice . . . or Rush to Execution? <http://www.texasmoratorium.org/rgraphics/DeathPenaltyReport.pdf>

Competent attorneys shy away from taking appointments because they are too poorly compensated bythe county, and often lose considerable money and business when they do take appointments. Appointments to criminal cases pay less than other legal work. Pervasive underfunding by counties is a principal reason for the poor quality of legal representation. Not only is payment problematic at the trial level where the counties pay court-appointed attorneys, but so too at the appeals and habeas corpus levels where the Court of Criminal Appeals reimburses counties for attorneys for post-conviction appellate and habeas corpus work, up to $25,000. A committee of the State Bar of Texas estimated that defending a post-conviction capital client requires between 400 and 900 hours of work. b However, the Court of Criminal Appeals, with a reimbursement cap of $25,000, essentially limits state-funded compensation to 150 hours. If attorneys put in the amount of time actually needed to sufficiently represent their clients, they would earn less than the standard hourly rate for lawyers (and, even in some cases that involve intense development, they could be making minimum wage), which means they would not earn enough to support their office operations and staff. In serving as court-appointed counsel at any level of the capital punishment process, defense attorneys actually work at a deficit from their usual pay schedule. In private practice, these attorneys command a fee that incorporates the costs of running their offices. Thus, when they receive inadequate compensation to defend a capital case, they are losing money and are unable to meet the financial demands of office infrastructure.

### Further obstacles exist for defense counsel in these cases

Texas Civil Rights Project, September 2000, THE DEATH PENALTY IN TEXAS Due Process and Equal Justice . . . or Rush to Execution? <http://www.texasmoratorium.org/rgraphics/DeathPenaltyReport.pdf>

Apart from the lack of adequate compensation for appointed attorneys, their work is further hindered by the deficient resources afforded them by the courts. To properly defend their cases, defense lawyers often must employ investigators, forensic specialists, mental health experts, or other experts. The District Attorney offices do not have difficulties in obtaining such services. The defense, on the other hand, must request these services from the court and rely on judicial discretion in granting them. In fact, the defense must anticipate which services the lawyer needs to use and then request advance payment from the trial judge. This procedure, which necessarily involves communicating to the judge the defense strategy and what testimony will be utilized, puts the defense in a Catch-22. In essence, the defense must convince the judge that the money will be well spent.

### Unqualified counsel results in injustice

Texas Civil Rights Project, September 2000, THE DEATH PENALTY IN TEXAS Due Process and Equal Justice . . . or Rush to Execution? <http://www.texasmoratorium.org/rgraphics/DeathPenaltyReport.pdf>

Defense inadequacy is a primary reason why the American Bar Association (ABA) called for moratorium on executions in 1997. In July 2000, the incoming president of the ABA, Martha Burnett, urged a moratorium on the federal death penalty as well: "No defendant should be executed until we assure that the imposition of the ultimate sanction is not a result of inadequate counsel or lack of due process. We cannot ignore that there is unfairness in the way the death penalty is imposed in this country.

## Aff: Process Unjust

### Counsel are often incompetent

Texas Civil Rights Project, September 2000, THE DEATH PENALTY IN TEXAS Due Process and Equal Justice . . . or Rush to Execution? <http://www.texasmoratorium.org/rgraphics/DeathPenaltyReport.pdf>

The third highly problematic area regarding appointed counsel is the general overall level of competency. All too often, the courts appoint defense counsel with dubious credentials to serve as the last chance for a person facing death. The examples of incompetent defense are never-ending, and alarming. Frederico Martínez-Macías, as but one example, spent nine years on death row in Texas and was two days away from execution before a pro bono attorney in Washington, D.C., succeeded in convincing a court that he had investigated and rebutted the state's evidence. A court-appointed attorney represented Martínez-Macías at trial. He did not call witnesses, including an alibi witness who directly disputed the state's evidence. In ordering a new trial, the U. S. Fifth Circuit Court of Appeals, which oversees Texas, noted that his court-appointed attorney effectively had been paid $11.84/hour by the state, and "the justice system got only what it paid for." 14 Texas leads the way in court-appointment failures. Under Governor George W. Bush, about one third (43) of 131 people recently executed were represented at trial or on initial appeal by an attorney who was later disbarred, suspended, or otherwise sanctioned.

### Unchecked prosecutorial discretion allows injustice

Texas Civil Rights Project, September 2000, THE DEATH PENALTY IN TEXAS Due Process and Equal Justice . . . or Rush to Execution? <http://www.texasmoratorium.org/rgraphics/DeathPenaltyReport.pdf>

The district attorney has unrestricted discretion as to for whom to seek the death penalty. The prosecutor has unchecked discretion whether to charge a person with capital murder or not. The question becomes whether the ability of an accused person to hire a respected, competent attorney has an impact on the prosecutor’s decision to seek the death penalty, and, of course, whether more subtle issues of poverty and racism enter into the picture.

### Prosecutorial elections results in injustice

Texas Civil Rights Project, September 2000, THE DEATH PENALTY IN TEXAS Due Process and Equal Justice . . . or Rush to Execution? <http://www.texasmoratorium.org/rgraphics/DeathPenaltyReport.pdf>

Prosecutors in Texas are charged with seeking justice, not convictions. This command is not as simple as it sounds. In Texas, as in the rest of the country, state district attorneys are elected positions. Texas district attorneys, like Texas judges, campaign vigorously on “tough on crime” platforms. Prosecutors typically show they are tough on crime through convictions: "The drive to win is fueled by a variety of factors, including ... pleasing the public." In Texas, the prosecutor’s ability to win is also bolstered by a skewed balance of power in the courtroom where elected judges also need to look tough on crime and where a poor defendant has to face off against all the resources that a district attorney can muster to win the case. Prosecutorial abuse in Texas is not infrequent, and when discovered, is often reported in the media -although the abuse does not always lead to a reversal of the conviction. It has led to cases like Randall Adams’, who served 12 years in prison, part of the time on death row, before being exonerated and set free. The prosecutor who “won” the case against Adams had never lost a case. To “win” against Adams, however, the district attorney failed to turn over exculpatory evidence to the defense and supported perjury among other indiscretions. But he himself was never disciplined, despite the harm he caused to Adams and the miscarriage of justice he perpetrated.

## Aff: Legal Process is Biased

### Jury selection process makes convictions more likely

Texas Civil Rights Project, September 2000, THE DEATH PENALTY IN TEXAS Due Process and Equal Justice . . . or Rush to Execution? <http://www.texasmoratorium.org/rgraphics/DeathPenaltyReport.pdf>

During the jury selection process in Texas, a juror who expresses "conscientious scruples in regard to the infliction of the punishment of death” or “bias or prejudice” against the death penalty is disqualified from jury service for cause. It is through this process that jurors become "death qualified." Unfortunately for the defendant, studies demonstrate, and common sense teaches, that a "death qualified" jury is more likely to convict. Not only does this process inhibit the composition of a fair and impartial jury that represents a crosssection of the community, as commanded by the Texas Constitution, but it may also serve as a vehicle for racial bias or to exclude minorities from juries when a defendant is a minority person, as happens about 50% of the time in Texas capital punishment trials.

### Unreliable evidence risks innocent people being convicted

James C. McKinley, NY Times, December 6, 2010, Legal Challenge to the Death Penalty Begins in Texas

Texas has executed 464 people for murder in the last three decades, more than any other state, and the death penalty has widespread support here. But in at least 12 cases since 1973, people on death row in Texas have been exonerated. In addition, questions have been raised about the convictions of two men already executed for their crimes — Cameron Todd Willingham and Claude Jones. Mr. Willingham was put to death in 2004 after being convicted of burning down his home in Corsicana in 1991, killing his three children. His guilt is now in question as arson experts have found fault in the evidence against him. Mr. Jones was executed in 2000 for the 1989 killing of a liquor store owner near Point Blank. After his death, a DNA test showed that a hair that had linked him to the crime scene did not belong to him. Both cases are expected to be raised during the hearing. Richard C. Dieter, the director of the Death Penalty Information Center in Washington, was the first witness. He said that since 1973, at least 138 people sentenced to death had been later exonerated. “There certainly is a risk of executing the innocent and that risk still exists today,” he said.

### Death penalty is unjust

Matthew Robinson, Journal of Theoretical and Philosophical Criminology, 2011, Vol: 3()2) Is Capital Punishment Just? Assessing the Death Penalty Using Justice Theory

With regard to virtue-based theorists, recall that the most important question is whether capital punishment respects and promotes our values, our moral goodness, and whether it is the right thing to do. These are questions that are difficult to answer given the wide variety of values, morality, and sense of “right” among citizens. Yet, given that the death penalty fails to comport with libertarianism, egalitarianism, and utilitarianism, it would be hard to argue that capital punishment satisfies any virtue-based theory. That is, it would be hard to convincingly argue that capital punishment is valuable or moral or right when it fails to respect liberty, when it so unequally applied, and when it imposes more costs than benefits and thus fails to increase overall utility or happiness in society.

## Aff: No Deterrence

### Studies showing deterrent effect are flawed

John Holdridge and Cassandra Stubbs, Huffington Post, January 8, 2008, Debunking the Death Penalty Deterrence Myth

Economist and law professor John Donohue of Yale University, together with economist Justin Wolfers of the University of Pennsylvania, conducted an exhaustive analysis of the datasets used by several deterrence proponents. They reported that, while the evidence pointed more strongly to an increase in homicides following executions, "there exists profound uncertainty" about capital punishment's deterrent or anti-deterrent effect because of the enormous disparity between the number of homicides and the number of executions. Numerous other studies by distinguished social scientists have reached essentially the same conclusion -- that, like an election poll that samples too few voters, the limited available data render any conclusions meaningless. For example, Jeffrey Fagan of Columbia University, along with other experts, examined the data and found that each execution may save 10 lives -- plus or minus 14 lives. In other words, executions may result in deterrence, no deterrence or more homicides -- not exactly a confidence-inspiring result.

### Small sample size makes drawing conclusions on deterrence impossible

John Holdridge and Cassandra Stubbs, Huffington Post, January 8, 2008, Debunking the Death Penalty Deterrence Myth

Moreover, the small number of executions makes any conclusions about their influence on homicide rates highly vulnerable to slight changes in the statistical models used. In one of many examples in their analysis, Donohue and Wolfers looked at a deterrence study that had attempted to account for a number of factors that might have influenced execution and homicide rates, including the effect of "partisan influence." This study had concluded that each execution decreases homicides by 18. When Donohue and Wolfers used a slightly different method to account for partisan influence, they found that each execution increases homicides by 18; when they dropped the factor altogether, they found that each execution adds over 50 homicides.

### Other explanations exist for a decrease in homicides

John Holdridge and Cassandra Stubbs, Huffington Post, January 8, 2008, Debunking the Death Penalty Deterrence Myth

The first glaring problem is the studies' failure to consider alternate explanations for declining murder rates in recent years. The possible alternatives include, among other things: the increase of life sentences without release, the improved police "clearance" rates for felonies, and the waning of acute drug epidemics such as the crack problem of the early 1990s. Any study that doesn't take into account these obvious factors can't be taken seriously.

## **Aff: Death Row Inhumane**

### Death row conditions are inhumane

Allan Turner, Houston Chronicle, March 18, 2007, Texas death row inmate refuses food in protest http://www.chron.com/news/houston-texas/article/Texas-death-row-inmate-refuses-food-in-protest-1561368.php#page-1

Skinner, who once filed a lawsuit against TDCJ over death row conditions, said problems with prison staff dramatically have improved. But isolation remains a critical problem. "That's especially a problem with inmates who can't read or write," he said. "They end up just sitting in their cells. ... A lot of times, when stimuli are reduced, you start to focus minutely on every little thing. You start to lose association. Have you ever known someone you'd call 'scatterbrained'? Well, that's what it is like. You're in a fog. You start to think the walls are closing in on you." Leslie Dupuy, a mental health official with the University of Texas Medical Branch's inmate-care section, said mental health workers have 250 "clinical encounters" with death row inmates each month. Currently, 65 male death row prisoners receive ongoing mental health services.

### Death row conditions cause severe mental and physical harm

Allan Turner, Houston Chronicle, March 18, 2007, Texas death row inmate refuses food in protest http://www.chron.com/news/houston-texas/article/Texas-death-row-inmate-refuses-food-in-protest-1561368.php#page-1

Pippin's protest came weeks after a January Amnesty International letter to the Texas Department of Criminal Justice alleged that death row conditions violate international human rights agreements. Specifically, the London-based group took issue with policies that keep killers isolated in small cells for as long as 23 hours a day and with bans on television viewing, work programs, group recreation and religious services. Such "inherently inhumane" treatment, Amnesty's Susan Lee complained to TDCJ director Brad Livingston, can cause severe physical and mental harm.

### Conditions are inhumane

Renee Feltz, KPFT News, November 8, 2002, Cruel and Unusual? Texas death row conditions <http://kpft.igc.org/news/110802story3.html>

Beyond the expected misery of death row, when prisoners find themselves on routine lockdowns their freedom of movement is even more restricted. Media spokeswoman for the Texas Department of Criminal Justice, Michelle Lyons: "For death row it doesn't realy matter because death row inmates are in the cells for the majority of the day anyway. But they complain because, again, they don't get the hot meals, they get their sandwiches. During that time they are not allowed to leave their cells as often, but we have to do it because you know obviously during a month's time, it makes them accumulate contraband. Whether it should be illegal things that they shouldn't have in their cells such as tobacco products, or if its contraband in the way that they have more in their cell that they're supposed to. You know, they're limited in the amount of property they're allowed to have in their cell." In letters to family members from loved ones on death row, complaints have surfaced that items purchased at the prison commissary have been confiscated as well - including previously bought food that an inmate might eat during a lockdown when meals are limited. Other restrictions inmates have been subjected to include limitations on the amount of belongings they are allowed to keep in their cell.

## Legal Process is Just

### Texas system ensures just representation of defendants in capital cases

Richard Roper, United States Attorney Northern District of Texas, Fall 2008, THE DEATH PENALTY AT THE INTERSECTION OF REALITY AND JUSTICE, Texas Tech Law Review, 41 Tex. Tech L. Rev. 15

First, the bar should ensure not only that outstanding appellate counsel are available to assist defendants on death row, but also that excellent trial counsel are appointed to represent those charged with capital offenses. The State Bar of Texas has addressed this issue by promulgating Guidelines and Standards for Texas Capital Counsel. These guidelines provide guidance on the minimum qualifications of defense counsel and detail the composition, nature, and function of a capital-offense defense team, including the necessity for two attorneys, an experienced investigator, and a mitigation specialist. Texas also requires that capital defense counsel be selected by the presiding judge and that the lead counsel have at least five years experience in criminal law. In addition, federal law sets standards to ensure that experienced capital counsel represent defendants and have available the necessary investigative, expert, and other services as is “reasonably necessary.” From my experience in the greater Fort Worth, Texas area, both state and federal judges have appointed outstanding criminal defense attorneys with superior statewide and national reputations to represent defendants charged with capital offenses.

### Legal reforms have eliminated injustice in Texas death row

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

Recent reforms in the leading death penalty state of Texas will serve to illustrate the point. In 1995, Texas created local selection committees to handle appointment of counsel in capital cases and set a variety of competence standards for capital defense attorneys. As part of the continuing effort to monitor defense counsel in capital cases, in 2001, Texas established a Task Force on Indigent Defense to develop further standards and policies for the appointment of defense counsel.

### Claims of unfairness are outdated

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

The evidence of inadequacy of counsel suffers another serious flaw—it is grossly outdated. It is striking how many of the examples are more than 10 and even 20 years old. Perhaps such timeworn anecdotes would be instructive if attorney appointment procedures had remained the same. They have not. In recent years, nearly all of the states authorizing capital punishment have created specific competency standards for appointed counsel. Most of those standards exceed the exacting qualifications that Congress required for appointment of counsel in federal case.

## Death Penalty Deters Future Crimes

### Life without parole does not stop guilty from killing

Richard Roper, United States Attorney Northern District of Texas, Fall 2008, THE DEATH PENALTY AT THE INTERSECTION OF REALITY AND JUSTICE, Texas Tech Law Review, 41 Tex. Tech L. Rev. 15

Or perhaps it is those inmates confined in prison that still conspire to kill those on the outside. Take Clarence Allen, who after being sentenced to life without parole for burglary and murder, orchestrated a triple-murder and a conspiracy to murder seven people, all in an effort to silence the witnesses who testified in his original trial. Or consider Julius Robinson, who while in jail awaiting a capital-murder trial for the depraved and senseless murders of three individuals, ordered three of his accomplices to kill a potential government witness. These prison murders, escapes, and retaliation murders illustrate the difficulty in segregating and controlling all of the violent offenders who will kill even with limited resources. Because they have little to lose, the control of an inmate serving life without parole is a formidable challenge. Life without parole is simply no panacea.

### Texas death penalty saves lives

Michael Graczyk, January 6, 2010, Study: Death penalty in Texas a homicide deterrent, <http://www.myssnews.com/news-telegram/news/state-news/8533-study-death-penalty-in-texas-a-homicide-deterrent.html>

As many as 60 people may be alive today in Texas because two dozen convicted killers were executed last year in the nation's most active capital punishment state, according to a study of death penalty deterrence by researchers from Sam Houston State University and Duke University. A review of executions and homicides in Texas by criminologist Raymond Teske at Sam Houston in Huntsville and Duke sociologists Kenneth Land and Hui Zheng concludes a monthly decline of between 0.5 to 2.5 homicides in Texas follows each execution. "Evidence exists of modest, short-term reductions in the numbers of homicides in Texas in the month of or after executions," the study published in a recent issue of Criminology, a journal of the American Society of Criminology, said.

### Use of death penalty prevents future murders

Adam Liptak, New York Times, November 18, 2007 Does Death Penalty Save Lives? A New Debate, <http://www.nytimes.com/2007/11/18/us/18deter.html?pagewanted=all>

For the first time in a generation, the question of whether the death penalty deters murders has captured the attention of scholars in law and economics, setting off an intense new debate about one of the central justifications for capital punishment. According to roughly a dozen recent studies, executions save lives. For each inmate put to death, the studies say, 3 to 18 murders are prevented. The effect is most pronounced, according to some studies, in Texas and other states that execute condemned inmates relatively often and relatively quickly. The studies, performed by economists in the past decade, compare the number of executions in different jurisdictions with homicide rates over time — while trying to eliminate the effects of crime rates, conviction rates and other factors — and say that murder rates tend to fall as executions rise. One influential study looked at 3,054 counties over two decades.

## Deterrence

### Deterrent effect of death penalty provides an ethical justification for its use

Adam Liptak, New York Times, November 18, 2007 Does Death Penalty Save Lives? A New Debate, <http://www.nytimes.com/2007/11/18/us/18deter.html?pagewanted=all>

But the studies have started to reshape the debate over capital punishment and to influence prominent legal scholars. “The evidence on whether it has a significant deterrent effect seems sufficiently plausible that the moral issue becomes a difficult one,” said Cass R. Sunstein, a law professor at the University of Chicago who has frequently taken liberal positions. “I did shift from being against the death penalty to thinking that if it has a significant deterrent effect it’s probably justified.” Professor Sunstein and Adrian Vermeule, a law professor at Harvard, wrote in their own Stanford Law Review article that “the recent evidence of a deterrent effect from capital punishment seems impressive, especially in light of its ‘apparent power and unanimity,’ ” quoting a conclusion of a separate overview of the evidence in 2005 by Robert Weisberg, a law professor at Stanford, in the Annual Review of Law and Social Science. “Capital punishment may well save lives,” the two professors continued. “Those who object to capital punishment, and who do so in the name of protecting life, must come to terms with the possibility that the failure to inflict capital punishment will fail to protect life.”

### Death penalty provides the only effective deterrent

Morgan Reynolds, Director Criminal Justice Center National Center for Policy Analysis, March 1, 2000 The Death Penalty: Fair and Effective in Texas, http://heartland.org/policy-documents/death-penalty-fair-and-effective-texas

Seven types of murder can qualify as capital crimes in Texas: murder of a child under six years of age; murder of a public safety officer, firefighter, or correctional officer; murder for hire; murder during the commission of specified felonies such as robbery; murders committed during prison escapes; murder by a prisoner serving a life sentence for any of five offenses; and multiple murders. All murders are not the same event. Executions are saved for the worst and serve obvious utilitarian ends. Marginal deterrence--signaling--is necessary to discourage marginal harm. Robbers, for example, must be encouraged to leave victims and witnesses alive. Murderers must have an incentive to stop at one life snuffed. Guards need protection from "lifers," and everybody does from prison escapees. We're kidding ourselves if we believe that a life sentence means total isolation from society. Only death offers such separation.

### The death penalty has empirically reduced murder rates in Texas

Morgan Reynolds, Director Criminal Justice Center National Center for Policy Analysis, March 1, 2000 The Death Penalty: Fair and Effective in Texas

Some acts are bad enough to deserve the death penalty as impartial retribution, pure and simple. Remember Jeffrey Dahmer, that butcher of boys and young men in Milwaukee? No death penalty in Wisconsin, so he got a life sentence from the court. But his fellow inmates gave him a death sentence, killing him in prison. So who was more just, the state or the inmates? I'd say the inmates got it right, even if they took the law into their own hands. Local sentiment varies, but government must take such opinion into account--if too many criminals walk or the system is too soft, people will do the job on criminals that government won't. Does the death penalty deter? In Texas, the murder rate has fallen over 60 percent since the state started using the death penalty seriously for selected crimes in the 1990s, while the national murder rate fell 33 percent. Coincidence? Maybe. But the spirit and practice of orderly retribution is a mark of civilization. Societies unwilling to execute their worst criminals expose the low value they place on the lives of victims.

## Neg: Lethal Injection Drug is Humane

### Claims of inhumane effects of lethal injection drug are false

Kyle Janek, State Senator and anesthesiologist, February 1, 2004, Attack on Texas' lethal injections is bogus, Houston Chronicle

Having no hope of overturning capital punishment itself at the ballot box or through the court system, a few vocal death penalty opponents, including inmates, have rolled out a new strategy to change how it is carried out. In what amounts to practicing medicine without a license, those critics have started to attack the inclusion of pancuronium bromide as one of the medications used in the lethal injection process. They claim its use is "cruel and unusual." Is pancuronium bromide some new, untested drug whose sole purpose is to torture? Is it perhaps an exotic street drug that should be outlawed? Well, actually ... no. Pancuronium bromide is a federally approved medication used routinely in hundreds of thousands of medical procedures in this country every year. I know that because, as a licensed, practicing anesthesiologist for the last 20 years, I have given pancuronium bromide and similar drugs to thousands of patients in the operating room, albeit with different results. As any other anesthesiologist will tell you, this argument involving pancuronium bromide is bogus.

### Lethal injection drug is not torture

Kyle Janek, State Senator and anesthesiologist, February 1, 2004, Attack on Texas' lethal injections is bogus, Houston Chronicle

The current argument against executions seems to hinge on the supposition that the second and 3rd drugs in this regimen would be cruel to someone who could feel them - and, to be candid, that assertion is true, since the pancuronium would cause a patient to be paralyzed and unable to respond to the pain of the potassium injection. Yet for that argument to be valid in any way, you must ignore the 1st drug in the process - sodium pentothal - that (1) renders the inmate to be completely unconscious, (2) has been used for decades to induce anesthesia in surgical patients and (3) is given in doses far exceeding what is needed to keep the inmate from being aware or feeling anything. Regardless of one's feelings about the death penalty as a moral punishment, as a deterrent or whether it is meted out fairly - this latest objection has neither logic nor science to support it. If it did, it would follow that anesthesiologists and nurse anesthetists in this country have been treating patients "unconstitutionally" for decades. Some years ago, a similar - and unsuccessful - protest was raised that the drugs given for lethal injection hadn't been approved by the Food and Drug Administration as being "safe and effective." Such logic is every bit as tortured as the current flap over pancuronium bromide.

### Lethal injection is humane

Dudley Sharp, advocate for Justice Matters, April 27, 2007. “Lethal injection: What pain? Current controversies resolved,” MEDICAL NEWS TODAY, accessed August 28, 2007, http://www.medicalnewstoday.com/youropinions.php?opinionid=16446 “The evidence, including the immediate autopsy of executed serial murderer/rapist Michael Ross, supports that there is no pain within the lethal injection process. There is a concern that some inmates may be conscious, but paralyzed, during execution, because one of the three drugs used may have worn off, prior to death. First, there is no evidence this has occurred. Secondly, if properly administered, it cannot occur with the properties and amounts of the chemicals used and within the time frame of an execution. “

## Death Penalty Not Racist

### The application of the death penalty is not racist

Charles Lane, The American Interest, November December 2010, The Death Penalty and Racism <http://www.the-american-interest.com/article.cfm?piece=901>

This assessment begins by acknowledging that African Americans commit a disproportionate number of murders in the United States: approximately half, according to government statistics. Yet in the death penalty states of post-Gregg America, black murderers have actually been somewhat less likely to wind up on death row than their white counterparts. Blacks committed 51.5 percent of murders nationwide between 1976 and 1998, according to a 2004 study by Professors Cornell law professors John Blume, Theodore Eisenberg and Martin T. Wells, but accounted for only 41.3 percent of those sentenced to death from 1977 to 1999. This relationship held true in every death penalty state, and—contrary to conventional wisdom—the under-representation of blacks on death row was greatest in the South. Only California, Utah and Nevada came close to sentencing black murderers to death in proportion to their share of the total.

### Racism claims are false

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

The support for this claim is said to be the undisputed fact that, when compared to their percentage in the overall population, African-Americans are overrepresented on death row. For example, while 12 percent of the population is African-American, about 43 percent of death row inmates are African-American, and 38 percent of prisoners executed since 1977 are African-American. 43 Such simple statistics of overrepresentation fail to prove racial bias. The relevant population for comparison is not the general population, but rather the population of murderers. If the death penalty is administered without regard to race, the percentage of AfricanAmerican death row inmates found at the end of the process should not exceed the percentage of African-American defendants charged with murder at the beginning. The available statistics indicate that is precisely what happens. The Department of Justice found that while African-Americans constituted 48 percent of adults charged with homicide, they were only 42 percent of those admitted to prison under sentence of death. In other words, once arrested for murder, blacks are actually less likely to receive a capital sentence than are whites.

### Large population of minorities on death row is not proof of racism

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

The over-representation of AfricanAmericans on death row to which Jackson refers is, indisputably, of great public concern. Policy makers must certainly examine the causes of that over-representation—for example, differences in economic or educational opportunities—and address them. But given such societal factors, racial bias cannot be inferred from such simplistic calculations.

## No Racism

### Statistics of overcharging minorities are false

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

Critics of this data might argue that police may be more likely to charge African-Americans than whites with murder at the outset of the process. The data does not support this. One way of investigating this claim is to analyze crime victim reports of the race of those who have committed crimes against them. While it is obviously impossible to talk to murder victims, it is possible talk to victims of armed robberies, who are reasonable surrogates. When victims’ reports of armed robbery cases are compared with the criminal justice processing of those cases, there is no evidence of racial discrimination in charging decision.

### Statistics show no racism in application of death penalty

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

To confirm or dispel concern about black defendants being singled out for the death penalty, one must conduct more sophisticated social science research. Various researchers (often of an abolitionist bent) have set out to prove such racial discrimination. They have been disappointed. The studies of the post-Furman death penalty in America have generally found that AfricanAmerican defendants are not more likely to receive the death penalty. Summarizing all the data in 1990, the General Accounting Office concluded that evidence that blacks were discriminated against was “equivocal.” Similarly, in a comprehensive study Professor Baldus and his colleagues reported that “regardless of the methodology used,” studies show “no systematic race-of defendant” effect.

### Racism claims are outdated and no longer apply

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

This ought to be treated as good news of progress in the American criminal justice system. One could draw the following conclusion—that, while African-American defendants in capital cases were previously treated unfairly (especially in the South), modern statistics reveal considerable progress. This conclusion, of course, is anathema to the agenda of abolitionists.

## AT Racism

### Claims of increased death penalty for African Americans killing whites are false

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

Abolitionist Bryan Stevenson argues that data demonstrates the existence of “racial bias in Georgia’s use of the death penalty,” by which he means statistics suggesting that blacks who kill whites are more likely to receive a death penalty than are other victim/ offender combinations. These specialist statistics are no less misleading than the mass market statistics

### Types of crimes committed explain the difference – not racism

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

Statisticians Stanley Rothman and Stephen Powers have offered the best review of the relevant data. 49 As they explain, the vast majority of homicides (no less than other offenses) are intraracial: about 95 percent do not cross racial lines. The small minority of interracial homicides have vastly different characteristics. Black-on-black homicides and white-on-white homicides are most likely to occur during altercations between persons who know one another, circumstances often viewed as inappropriate for the death penalty. On the other hand, black-on-white homicides are much more often committed during the course of a serious felony, a classic case for the death penalty. For example, in Georgia, only 7 percent of the blackdefendant-kills-black-victim cases involve armed robbery; compared to 67 percent of the black-defendant-kills-white-victim cases. Similarly, black-defendant-killswhite-victim cases more often involve the murder of a law enforcement officer, kidnapping and rape, mutilation, execution-style killing, and torture—all quintessential aggravating factors—than do other combinations. Finally, whitedefendant-kills-black-victim cases are so rare that it is difficult to draw meaningful statistical conclusions.

### Statistical claims of race are flawed

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

Given these obvious differences between, on the one hand, intra-racial homicides and, on the other, black-onwhite homicides, the simple comparisons of the percent of death sentences within each classification reported in this volume by both Stephenson and Bright is un-illuminating. To put the point in more precise statistical terms, an alleged race-of-the-victim effect will be an obvious “spurious” correlation. To cite but one example, a significant number of death penalty cases involve murder of law enforcement officers, about 85 percent of whom are white. Unless there are statistical controls for this fact, it is virtually certain that a simple eyeballing of statistics will show a race-of-thevictim effect that is instead immediately explainable by this fact (among many others).

## Deterrence

### Death penalty deters all kinds of crimes

Richard Roper, United States Attorney Northern District of Texas, Fall 2008, THE DEATH PENALTY AT THE INTERSECTION OF REALITY AND JUSTICE, Texas Tech Law Review, 41 Tex. Tech L. Rev. 15

At the forefront of pursuing the death penalty is the hope that future innocent victims will be spared. Recent studies, which draw on empirical evidence from the thirty years since the restoration of the death penalty in Gregg v. Georgia, demonstrate that the death penalty is a strong, successful deterrent. One national study suggests that on average each execution prevents eighteen murders. Another estimates that each execution deters an average of fourteen murders, and a third study, by Joanna M. Shepherd, found that on average each execution deters three murders. Earlier research reaches the same conclusion: execution deters murder. Similarly, a study by Mocan and Gittings focuses on the impact of commutations as well as executions: "Each additional execution decreases homicides by about five, and each additional commutation increases homicides by the same amount, while one additional removal from death row generates one additional homicide." Notably, the impact of executions reaches beyond murder, as it deters other crimes as well.

### Critics of deterrence claims are wrong

Richard Roper, United States Attorney Northern District of Texas, Fall 2008, THE DEATH PENALTY AT THE INTERSECTION OF REALITY AND JUSTICE, Texas Tech Law Review, 41 Tex. Tech L. Rev. 15

Those who doubt whether crime statistics can be used to gauge the deterrence effect of capital punishment rely heavily on two basic assumptions. First, they suppose that many murderers "are simply unresponsive to punishment threats." Second, they theorize that because relatively few persons are actually executed, "it is hard to believe that in modern America the fear of execution would be a driving force in a rational criminal's calculus." These assumptions, however, are subject to strong countervailing arguments. One commentator reports that the death penalty deters nearly all types of murder, including "crime-of-passion murders." Similarly, "it is difficult to deny theoretically the plausibility of a death penalty sanction deterring serious murders, at least [with regard to] premeditated deaths or felony murders." These assumptions ignore the notion that if criminal statutes generally are successful in deterring crime, the death penalty should not be any different. Few would dispute that criminal statutes have a deterrent effect on the commission of crime. Scholars often cite extracting longer sentences from criminals as a significant factor in reducing the violent crime rate to recent historic lows. Indeed, "evidence linking increased punishment to lower crime rates is very strong."

### The deterrent effect justifies the use of the death penalty

Michael Graczyk, January 6, 2010, Study: Death penalty in Texas a homicide deterrent, <http://www.myssnews.com/news-telegram/news/state-news/8533-study-death-penalty-in-texas-a-homicide-deterrent.html>

This study, however, is the first to focus on monthly data in Texas, where researchers said the number of executions -- 447 since capital punishment resumed in 1982 -- is statistically significant enough "to make possible relatively stable estimates of the homicide response to executions." A national deterrent effect can't be determined because "most states ... have not engaged in a sufficient level or frequency of executions per year," they said. Kent Scheidegger, legal director of the California-based Criminal Justice Legal Foundation, which supports capital punishment, said the study "would be sufficient by itself to justify the death penalty."

## Deterrence

### Other punishments are not an effective deterrent

Richard Roper, United States Attorney Northern District of Texas, Fall 2008, THE DEATH PENALTY AT THE INTERSECTION OF REALITY AND JUSTICE, Texas Tech Law Review, 41 Tex. Tech L. Rev. 15

Of course, the death penalty conclusively deters an executed murderer from ever killing again. But so would life without parole, according to death penalty opponents. In fact, such incarceration does provide a measure of protection to the public. Considering the realities of prison life and resources, however, this alternative to the death penalty is, at times, a less attractive option. As one court notes, "[W]e recognize that assaults and murders will occur in prisons despite the most vigilant of official conduct." Consider, for example, Carlos David Caro, a prison gang member confined to federal prison on a drug trafficking charge, who was placed in segregation after stabbing a rival gang member twenty-nine times. When guards temporarily placed another inmate in his two-person cell, the new inmate lasted less than twenty-four hours because Caro, after arguing with the new inmate over breakfast, took a towel, strangled the other inmate, and called on the prison guards to "[g]et this piece of s-- out of here[.]"Another example is Victor Ganus, one of those Illinois death row inmates fortunate enough to receive a commutation from Governor Ryan. While serving a life sentence for murder, Ganus brutally executed a fellow inmate by strangling and stabbing him. A quick search in any legal database reveals many additional violent, brutal prison murders.

### Death penalty is an effective deterrent

Richard Roper, United States Attorney Northern District of Texas, Fall 2008, THE DEATH PENALTY AT THE INTERSECTION OF REALITY AND JUSTICE, Texas Tech Law Review, 41 Tex. Tech L. Rev. 15

Because criminal penalties generally have a deterrent effect, this effect should not stop at the gateway of capital murder offenses. Following this logic, one commentator notes the absurdity of denying the death penalty's influence before the crime given its influence after apprehension: Those studies showing no such effect would seem to require a behavioral explanation for why the general process of cost-benefit decision making does not apply for murderers before they commit their crimes, despite the fact that it influences their decisions after they are apprehended, during the trial process, and during incarceration. It seems implausible, for instance, that criminals simply assume, unrealistically, they will get away with their crimes, and that they only become cognizant of the risk of death penalty when caught, given that the majority of murders in the United States do in fact result in arrest.

### Even the threat of death penalty can be an effective deterrent

Richard Roper, United States Attorney Northern District of Texas, Fall 2008, THE DEATH PENALTY AT THE INTERSECTION OF REALITY AND JUSTICE, Texas Tech Law Review, 41 Tex. Tech L. Rev. 15

The threat of the death penalty also serves additional utilitarian goals. For example, Gary Ridgeway, the notorious "Green River Killer," was arrested for murdering seven women in the State of Washington after a crime spree encompassing two decades left a trail of innumerable dead women. Prosecutors decided to forego seeking the death penalty in exchange for Ridgeway's assistance in clearing the murders and locating the bodies of other missing women he executed. Ridgeway pleaded guilty to the murder of forty-eight women. He also confessed to several murders for which law enforcement officials had little evidence, and assisted the officers in locating the bodies of those missing victims. Without the threat of the death penalty, Ridgeway would likely never have been motivated to assist officers in solving these murders.

## AT Innocent People Executed

### No empirical evidence of innocent persons being executed

Richard Roper, United States Attorney Northern District of Texas, Fall 2008, THE DEATH PENALTY AT THE INTERSECTION OF REALITY AND JUSTICE, Texas Tech Law Review, 41 Tex. Tech L. Rev. 15

Death penalty opponents justifiably raise questions as to whether our criminal justice system sufficiently produces reliable results to warrant the continued use of the death penalty. In fact, several studies advocate that we have convicted a number of defendants for capital murder who were later "exonerated." From these studies, ardent opponents of the death penalty stridently exalt "probable concerns about the justice of maintaining a capital punishment system in which there is a substantial risk that innocents routinely will be executed." The fact is, no reliable evidence exists to establish that any innocent defendants have been executed in the over thirty years following Gregg. Moreover, these "exoneration" studies have been subjected to strong criticism from commentators who argue that very few of these exonerated defendants are, in fact, innocent. Rather, nearly all of these exonerated defendants were tried in cases involving reversible error and a prosecutor who later decided against pursuing the death penalty, as the authors of these studies concede. Note also that the percentage of capital murder exonerations is very small considering the large number of murder convictions during that time period. Indeed, "[w]rongful convictions can be, and . . . probably are, both systemic and exceedingly rare."

### Claims of innocent people executed should be viewed skeptically

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

The questionable examples in the Bedau-Radelet article make an important point about the debate over mistaken executions. It is easy for opponents of the death penalty to allege, despite a unanimous jury verdict, appellate court review, and denial of executive clemency, that an “innocent” person has been executed. Such an assertion costs nothing and will help abolitionists advance their cause. As this review demonstrates, such claims should be reviewed with a healthy dose of skepticism.

### Risk of innocent executions do not justify the elimination of the death penalty

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

While abolitionists have been unable to find a credible case of an innocent person who has actually been executed in recent years, they have provided several credible “close call” cases—that is, examples of innocent persons who were sentenced to death who were exonerated shortly before the execution. Such miscarriages of justice are, to be sure, very troubling. These cases deserve careful study to determine what went wrong and what kinds of reforms can correct the problem. But when offered as justification for abolishing the death penalty, these close call cases are unpersuasive

## AT Innocent Persons Executed

### Greater risk of injustice if death penalty not used

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

To justify abolishing the death penalty on grounds of risk to the innocent, abolitionists would have to establish that innocent persons are jeopardized more by the retention of the death penalty than from its absence. In fact, the balance of risk tips decisively in favor of retaining the death penalty. On the one hand, abolitionists have been unable to demonstrate that even a single innocent person has been executed in error. On the other hand, there are numerous documented cases of innocent persons who have died because of our society’s failure to carry out death sentences.

### Using the death penalty is the only way to protect the innocent

Honorable Paul G. Cassell, Judge, Article for Institute for the Advancement of Criminal Justice Journal, Summer 2008, In Defense of the Death Penalty, http://www.da-tulareco.org/PDF/In\_defense\_of\_the\_DP.pdf

Earlier in this text, for example, I discussed the deaths of Colleen Reed and many other women because of society’s failure to execute a single dangerous murderer—Kenneth Allen McDuff. The victims of McDuff were no “close calls” but rather fatalities directly resulting from abolition of the death penalty in 1972. Today, thousands of killers no less dangerous than McDuff are currently incarcerated on the nation’s death rows. If they are not executed, they will remain serious threats to kill again—either inside prison walls or outside following an escape or a parole. Clearly, on any realistic assessment, the innocent are far more at risk from allowing these dangerous convicts to live than from executing them after a full and careful review of their legal claims.

### No proven innocent person executed in the last century

Dudley Sharp, Death Penalty Resources Director, October 1, 1997 DEATH PENALTY AND SENTENCING INFORMATION, <http://www.prodeathpenalty.com/dp.html>

Another significant oversight by that study was not differentiating between the risk of executing innocent persons before and after Furman v Georgia (1972). There is, in fact, no proof that an innocent has been executed since 1900. And the probability of such a tragedy occurring has been lowered significantly more since Furman. In the context that hundreds of thousands of innocents have been murdered or seriously injured, since 1900, by criminals improperly released by the U.S. criminal justice system (or not incarcerated at all!), the relevant question is: Is the risk of executing the innocent, however slight, worth the justifications for the death penalty - those being retribution, rehabilitation, incapacitation, required punishment, deterrence, escalating punishments, religious mandates, cost savings, the moral imperative, just punishment and the saving of innocent lives?

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## Neg: Deterrence

### Death penalty deters future crime

Roy D. Adler and Michael Summers, Wall Street Journal, November 2, 2007, Capital Punishment Works.

The conclusion that each execution carried out is associated with the saving of dozens of innocent lives creates an extraordinarily difficult moral dilemma for those who campaign against the death penalty. Until now, those activists could look into the eyes of a convicted killer, hear his or her sad story, work tirelessly to set aside the execution and, with that goal accomplished, feel good about themselves for having "saved a life." These data suggest that the moral equation is not nearly that simplistic.

It now seems that the proper question to ask goes far beyond the obvious one of "do we save the life of this convicted criminal?" The more proper question seems to be "do we save this particular life, at a cost of the lives of dozens of future murder victims?" That is a much more difficult moral dilemma, which deserves wide discussion in a free society.

### Studies show a large decrease in murders as a result of the death penalty

Roy D. Adler and Michael Summers, Wall Street Journal, November 2, 2007, Capital Punishment Works.

Recent high-profile events have reopened the debate about the value of capital punishment in a just society. This is an important discussion, because the taking of a human life is always a serious matter. Most commentators who oppose capital punishment assert that an execution has no deterrent effect on future crimes. Recent evidence, however, suggests that the death penalty, when carried out, has an enormous deterrent effect on the number of murders. More precisely, our recent research shows that each execution carried out is correlated with about 74 fewer murders the following year. For any society concerned about human life, that type of evidence is something that should be taken very seriously.

### Statistical evidence demonstrates the deterrent effect

Roy D. Adler and Michael Summers, Wall Street Journal, November 2, 2007, Capital Punishment Works.

In the early 1980s, the return of the death penalty was associated with a drop in the number of murders. In the mid-to-late 1980s, when the number of executions stabilized at about 20 per year, the number of murders increased. Throughout the 1990s, our society increased the number of executions, and the number of murders plummeted. Since 2001, there has been a decline in executions and an increase in murders. It is possible that this correlated relationship could be mere coincidence, so we did a regression analysis on the 26-year relationship. The association was significant at the .00005 level, which meant the odds against the pattern being simply a random happening are about 18,000 to one. Further analysis revealed that each execution seems to be associated with 71 fewer murders in the year the execution took place.

## AT Innocent People Executed

### Risk of innocent people being executed does not make the death penalty unjust

Eugene H. Methvin, Wall Street Journal, May 10, 2000. Death Penalty Is Fairer than Ever

Even Hugo Bedau, a professor at Tufts University and a leading abolitionist, has admitted that it is “false sentimentality to argue that the death penalty ought to be abolished because of the abstract possibility that an innocent person might be executed when the record fails to disclose that such cases occur.” That drunk drivers kill thousands of innocents, that airplanes fall, that pedestrians get smashed by cars, does not prevent us from drinking, flying or crossing the street. But the possibility that an innocent person may be executed is supposed to make us give up capital punishment because “death is irrevocable.”

### Procedural difficulties make innocent executions unlikely

Eugene H. Methvin, Wall Street Journal, May 10, 2000. Death Penalty Is Fairer than Ever

Many death-row convictions are overturned not on questions of guilt but on procedural grounds, in a judicial war against the death penalty. The Georgia Supreme Court in March 2000 overturned the death sentence of a killer who nearly decapitated a former girlfriend. The court found the prosecutor had wrongly urged jurors to follow the biblical mandate: “All they who take up the sword shall die by the sword.” Departing from prior decisions approving biblical arguments, Justice Norman Fletcher decreed: “Biblical references . . . improperly appeal to the religious beliefs of jurors.” Other judges have voided death sentences because jurors weren’t told the killer would otherwise get life without parole. Prosecutors, however, are forbidden to argue that killers might escape, which they do, even from high-security facilities.

### Multiple appeals and DNA testing prevent innocent executions

Eugene H. Methvin, Wall Street Journal, May 10, 2000. Death Penalty Is Fairer than Ever

Multiple appeals not only make executing the innocent more unlikely than ever, they make it hard to execute the clearly guilty. Illinois executed John Wayne Gacy in 1994 for murdering 33 young men. He had confessed, and his guilt was never in the slightest doubt. Yet his lawyers consumed 14 years with legal delays. “He had 523 separate appeals,” fumes House Judiciary Chairman Henry Hyde (R., Ill.). “And none were based on a claim of innocence.” Things haven’t changed much since then. On the first anniversary of the Oklahoma City bombing, Congress passed the Antiterrorism and Effective Death Penalty Act. For the first time in 128 years, legislators used their constitutional authority to strip the Supreme Court and lower federal judges of jurisdiction to hear appeals for a certain class of case. Even under this change, a state convict can still have 10 appeals (in some cases 12), before the new law affects him. He can go through five or six state and federal courts on direct appeal, then go through them again with habeas corpus petitions. But for a second federal habeas corpus review, Congress decreed, convicts must get permission from a three-judge federal appeals panel. If he is turned down, the Supreme Court can grant only one further review, and only in rare circumstances. As for DNA, that is doing much more than just helping re-evaluate convictions. At least 64 U.S. criminal convictions have been set aside as a result of DNA testing, according to the Innocence Project of the Cardozo Wrongful Executions Are Not Likely to Occur But DNA testing also allows investigators to eliminate many suspects early on, and concentrate on pursuing the real perpetrators.

## Deterrence

### Deterrence claims are true

Dudley Sharp, October 29, 2003, The Deterrent Effect of the Death Penalty, <http://www.hoshuha.com/resources/deteff.htm>

The potential for negative consequences deters some behavior. The most severe criminal sanction -- execution -- does not contradict that finding. Reason, common sense, history and the weight of the studies support the deterrent effect of the death penalty. The death penalty protects innocent lives. The absence of the death penalty sacrifices innocent lives. Is there any group, be they criminologists, historians, psychologists, economists, philosophers, physicians, journalists or criminals that does not recognize that the prospect of negative consequences constrains or deters the behavior of some? Of course not -- not even fiction writers so speculate. Even irrational people wear seat belts, choose not to smoke and do not rob police stations because of the potential for negative consequences.

### Defendants cooperate to avoid the death penalty

Dudley Sharp, October 29, 2003, The Deterrent Effect of the Death Penalty, <http://www.hoshuha.com/resources/deteff.htm>

At every level of the criminal justice process, virtually all criminals do everything they can to lessen possible punishments. I estimate that less than 1% of all convicted capital murderers request a death sentence in the punishment phase of their trial. The apprehended criminals' desire for lesser punishments is overwhelming and unchallenged. Of the 7300 inmates sentenced to death since 1973, 85, or 1.2% have waived remaining appeals and been executed. 98.8% have not waived appeals. The evidence is overwhelming that murderers would rather live on death row than die. Why? The survival effect -- life is preferred over death and death is feared more than life. Even on death row, that is the rule. Even such marginalized personalities as capital murderers fear death more than imprisonment. And that which we fear the most, deters the most. (kudos to Ernest van den Haag and many others) It is logical to conclude that some of those less marginalized personalities, who choose not to murder, also, overwhelmingly, fear death more than life, and, we, thus, logically conclude that some are deterred from murdering because of the enhanced deterrent effect of execution. The evidence for the survival effect in pretrial, trial and appeals is overwhelming and that weighs in favor of execution as a deterrent and as an enhanced deterrent over lesser sentences.

### Death penalty saves lives

Dudley Sharp, October 29, 2003, The Deterrent Effect of the Death Penalty, <http://www.hoshuha.com/resources/deteff.htm>

Common sense, reason and history all support that the potential for negative consequences restricts the behavior of some. But, if unsure of deterrence, we face the following dilemma -- If executions do deter, halting executions causes more innocents to be murdered and gives those living murderers the opportunity to harm and murder again. If the death penalty does not deter, and we do execute, we punish murderers as the jury deemed appropriate and we prevent those executed murderers from harming or murdering again. Oddly, death penalty opponents believe that the burden of proof is on those who say the death penalty is a deterrent. Clearly it is not. The weight of the evidence, within reason, history, common sense and the social sciences is that the potential for negative consequences restricts the behavior of some. That is not in dispute. Furthermore, if opponents cannot prove it is not a deterrent, which they never have and never will, then they are the ones who risk sacrificing innocents, both by absence of deterrence and reduced incapacitation.

## Deterrence

### Studies finding no deterrence are biased and flawed

Dudley Sharp, October 29, 2003, The Deterrent Effect of the Death Penalty, <http://www.hoshuha.com/resources/deteff.htm>

In reviewing 30 years of deterrence studies, the strongest statement one may make against deterrence is that there is conflicting data. Yet, even when academic bias against capital punishment is overt, such as in the case of the American Society of Criminology -- the subtitle to their death penalty resources page is "Anti-Capital Punishment Resources" -- even they fail to state that the death penalty does not deter some potential murderers, only that "social science research has found no consistent evidence of crime deterrence through execution." That is far from stating that executions do not deter. And the criminologists are, very likely, that academic group most hostile toward the death penalty. What social science conflicts with the notion that the potential for negative consequences restrains the behavior of some? And most would agree that execution is the most serious negative consequence that a murderer may face.

### Even conflicting studies justify the use of the death penalty as a deterrent

Dudley Sharp, October 29, 2003, The Deterrent Effect of the Death Penalty, <http://www.hoshuha.com/resources/deteff.htm>

Numerous studies find that executions do deter. And there is a rational conclusion based upon common experience. It appears that all criminal sanctions deter some. It would be irrational to conclude that the most severe and publicized sanction -- execution -- does not deter some potential murderers. Those studies which do not find deterrence say that they could not detect it, not that it doesn't exist. Those studies which find for deterrence state such. As Professor Cloninger states: " . . . (Our recent) study is but another on a growing list of empirical work that finds evidence consistent with the deterrence hypothesis. These studies as a whole provide robust evidence -- evidence obtained from a variety of different models, data sets and methodologies that yield the same conclusion. It is the cumulative effect of these studies that causes any neutral observer to pause." Conflicting studies and reason both weigh in favor of the death penalty as a deterrent and as an enhanced deterrent over lesser punishments.

### Brutalization claims are false

Dudley Sharp, October 29, 2003, The Deterrent Effect of the Death Penalty, <http://www.hoshuha.com/resources/deteff.htm>

Some, particularly death penalty opponents, find that the brutalization effect is more likely than the deterrent effect. The brutalization effect finds that murders will increase because potential murderers will murder because of the example of state executions. Why would potential and active murderers be so influenced by the state in such a deep philosophical manner, revealed by brutalization, but they wouldn't be more affected by the simple "you murder, we execute you?" Death penalty opponents make an interesting about face on this issue. They insist that criminals are so thoughtless and impulsive that they can't be affected by the potential of negative consequences but, then, those same opponents see criminals as so contemplative that their criminal actions increase BECAUSE those criminals follow the example of the state. One might ask those opponents: "Is there any other government action which influences criminals in such a fashion?" Do criminals kidnap more BECAUSE the state increases incarceration rates? Do criminals give money to potential victims BECAUSE the state donates to needy causes?

## Death Penalty Just

### Death penalty is ethical

Dudley Sharp, October 29, 2003, The Deterrent Effect of the Death Penalty, <http://www.hoshuha.com/resources/deteff.htm>

Those of us who support execution do so because it is a just punishment. The moral foundation for all punishments is that they are deserved. One cannot support a punishment based upon deterrence alone. Reason, common sense and history all fall on the side of deterrence. Be it Sweden or Rwanda, Texas or Michigan, Singapore or Chile, England or Japan, whether high crime rates or low, the death penalty will always deter some potential murderers. Regardless of jurisdiction, the potential for negative outcomes will always restrict the behavior of some. And, the weight of the evidence clearly supports execution as an enhanced deterrent. As Professor Rubin states, "Our evidence is that there are substantial benefits from executions and, thus, substantial costs of changing this policy. We support execution as a just and appropriate forfeiture of lives which deserve to be taken. We also support execution as a just and appropriate method to save lives which deserve to be saved.

### Abolitionist claims are immoral

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty Webpage, http://www.wesleylowe.com/cp.html#contents

Abolitionists keep talking about the risks of a wrongful execution in the death penalty's use. Well, being moral and just individuals, we will not avoid taking issue with that risk. However, the risks involving capital punishment is not nearly as dangerous or as insensitive to those it puts at risk as the risks that are associated with abolitionist standards. Indeed, under the liberal influences in our criminal justice system, the murder rate skyrocketed along with the number of repeat offences. But those who endorse these liberal standards never demonstrate the morality or the responsibility to take issue with these lethal flaws and work at least twice as hard to protect the innocents that are threatened by the murderers they are so dedicated to preserving. That is probably why the vast majority of people around the world favor capital punishment, because the death penalty never treats even the most hypothetical and highly unlikely of risks involved in its use with nearly as much contempt and disregard as abolitionists habitually treat countless of real life incidents as a consequence of their agenda. This is what confirms capital punishment's superior level of responsibility and morality.

### Death penalty is justified

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty Webpage, http://www.wesleylowe.com/cp.html#contents

The whole reason why nations and governments exist is to defend their decent citizens from vicious criminals. When it fails to do that, they become of little use to its citizens. When a society ignores their moral duty to defend the safety and security of their decent citizens and leaves them at the mercy of violent criminals, they are not being "civilized," they are being negligent. I am certain that there will come a time when all the nations in the world will be forced to agree after decades of experience on this issue, that capital punishment, like the military and the police force and taxes, is an inevitable and unavoidable consequence of every civilized society and it will no longer be a question of whether or not a nation should have the death penalty, but rather how it should be used.

## Deterrence

### Death penalty empirically decreases murder rates

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty, http://www.wesleylowe.com/cp.html#contents

During the temporary suspension on capital punishment from 1972-1976, researchers gathered murder statistics across the country. In 1960, there were 56 executions in the USA and 9,140 murders. By 1964, when there were only 15 executions, the number of murders had risen to 9,250. In 1969, there were no executions and 14,590 murders, and 1975, after six more years without executions, 20,510 murders occurred rising to 23,040 in 1980 after only two executions since 1976. In summary, between 1965 and 1980, the number of annual murders in the United States skyrocketed from 9,960 to 23,040, a 131 percent increase. The murder rate -- homicides per 100,000 persons -- doubled from 5.1 to 10.2. So the number of murders grew as the number of executions shrank. Researcher Karl Spence of Texas A&M University said: "While some [death penalty] abolitionists try to face down the results of their disastrous experiment and still argue to the contrary, the...[data] concludes that a substantial deterrent effect has been observed...In six months, more Americans are murdered than have killed by execution in this entire century...Until we begin to fight crime in earnest [by using the death penalty], every person who dies at a criminal's hands is a victim of our inaction."

### Deterrence effects are strongest in Texas

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty Webpage, http://www.wesleylowe.com/cp.html#contents

The most striking protection of innocent life has been seen in Texas, which executes more murderers than any other state. According to JFA (Justice for All), the Texas murder rate in 1991 was 15.3 per 100,000. By 1999, it had fallen to 6.1 -- a drop of 60 percent. Within Texas, the most aggressive death penalty prosecutions are in Harris County (the Houston area). Since the resumption of executions in 1982, the annual number of Harris County murders has plummeted from 701 to 241 -- a 72 percent decrease. Edward Koch, former mayor of New York City, said: "Had the death penalty been a real possibility in the minds of...murderers, they might well have stayed their hand. They might have shown moral awareness before their victims died...Consider the tragic death of Rosa Velez, who happened to be home when a man named Luis Vera burglarized her apartment in Brooklyn. "Yeah, I shot her," Vera admitted. "...and I knew I wouldn't go to the chair."

### Recent studies confirm this

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty, http://www.wesleylowe.com/cp.html#contents

More recently, a series of academic studies within the last six years show that the death penalty does indeed act as a deterrent to murder. These analysts count that between three and 18 lives would be saved by the execution of each convicted murderer. Naci Mocan, an economics professor at the University of Colorado at Denver, co-authored a 2003 study and re-examined a 2006 study that found that each execution results in five fewer homicides, and commuting a death sentence means five more homicides. In an interview, he states: "Science does really draw a conclusion...There is no question about it. The conclusion is there is a deterrent effect. The results are robust. They don't really go away. I oppose the death penalty. But my results show that the death penalty (deters) - what am I going to do, hide them?" These studies are among a dozen papers since 2001 that the death penalty has a deterrent effect. They all look at executions and homicides by year and by state or county in order to figure out the impact of the death penalty on homicides by accounting for other factors, such as unemployment data and per capita income, the probabilities of arrest and conviction and more.

## AT Life Without Parole

### This allows for murders to occur within prison

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty Webpage, http://www.wesleylowe.com/cp.html#contents

Abolitionists claim that there are alternatives to the death penalty. They say that life in prison without parole serves just as well. Certainly, if you ignore all the murders criminals commit within prison when they kill prison guards and other inmates, and also when they kill decent citizens upon escape, like Dawud Mu'Min who was serving a 48-year sentence for the 1973 murder of a cab driver when he escaped a road work gang and stabbed to death a storekeeper named Gadys Nopwasky in a 1988 robbery that netted $4.00. Fortunately, there is now no chance of Mu'Min commiting murder again. He was executed by the state of Virginia on November 14, 1997.

### Life without parole is not guaranteed to prevent future crimes

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty Webpage, http://www.wesleylowe.com/cp.html#contents

Another flaw is that life imprisonment tends to deteriorate with the passing of time. Take the Moore case in New York State for example. In 1962, James Moore raped and strangled 14-year-old Pamela Moss. Her parents decided to spare Moore the death penalty on the condition that he be sentenced to life in prison without parole. Later on, thanks to a change in sentencing laws in 1982, James Moore is eligible for parole every two years! If Pamela's parents knew that they couldn't trust the state, Moore could have been executed long ago and they could have put the whole horrible incident behind them forever. Instead they have a nightmare to deal with biannually. I'll bet not a day goes by that they don't kick themselves for being foolish enough to trust the liberal sham that is life imprisonment and rehabilitation. (According to the US Department of Justice, the average prison sentence served for murder is five years and eleven months.) Putting a murderer away for life just isn't good enough. Laws change, so do parole boards, and people forget the past. Those are things that cause life imprisonment to weather away. As long as the murderer lives, there is always a chance, no matter how small, that he will strike again. And there are people who run the criminal justice system who are naive enough to allow him to repeat his crime.

### Empirical examples show not enforcing the death penalty results in violence

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty Webpage, http://www.wesleylowe.com/cp.html#contents

Kenneth McDuff, for instance, was convicted of the 1966 shooting deaths of two boys and the vicious rape-strangulation of their 16-year-old female companion. A Fort Worth jury ruled that McDuff should die in the electric chair, a sentence commuted to life in prison in 1972 after the U.S. Supreme Court struck down the death penalty as then imposed. In 1989, with Texas prisons overflowing and state officials under fire from the federal judiciary, McDuff was quietly turned loose on an unsuspecting citizenry. Within days, a naked body of a woman turned up. Prostitute Sarafia Parker, 31, had been beaten, strangled and dumped in a field near Temple. McDuff's freedom in 1989 was interrupted briefly. Jailed after a minor racial incident, he slithered through the system and was out again in 1990.

## AT Costs

### Life without parole costs more

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty Webpage, http://www.wesleylowe.com/cp.html#contents

There's a claim that it is more expensive for the state to execute a criminal than to incarcerate him for life. Many opponents present, as fact, that the cost of the death penalty is so expensive (at least $2 million per case?), that we must choose life without parole ("LWOP") at a cost of $1 million for 50 years. Predictably, these pronouncements may be entirely false. JFA (Justice for All) estimates that LWOP cases will cost $1.2 million - $3.6 million more than equivalent death penalty cases. And life without parole prisoners face, on average, 30 or 40 years in prison while the annual cost of incarceration is $40,000 to $50,000 a year for each prisoner or more! There is no question that the up front costs of the death penalty are significantly higher than for equivalent LWOP cases. There also appears to be no question that, over time, equivalent LWOP cases are much more expensive - from $1.2 to $3.6 million - than death penalty cases. Opponents ludicrously claim that the death penalty costs, over time, 3-10 times more than LWOP.

### Threat of the death penalty encourages settlement and decreases costs

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty, http://www.wesleylowe.com/cp.html#contents

Also, U.S. states that repeal death penalty laws do not see a significant savings in trial costs. In states where the death penalty is the maximum punishment, a larger number of defendants are willing to plead guilty and receive a life sentence. The greater cost of trials where the prosecution does seek the death penalty is offset, at least in part, by the savings from avoiding trial altogether in cases where the defendant pleads guilty. The study -- The Death Penalty and Plea Bargaining of Life Sentences -- examined data gathered by the U.S. Bureau of Justice Statistics from 33 large urban counties. The study examined how many of the murder cases were resolved by guilty plea, how many went to trial and how many resulted in a sentence of at least 20 years. In states with the death penalty, the average county obtained sentences of 20 years or more in more than 50 percent of cases where the defendant was convicted of murder or voluntary manslaughter. In states without the death penalty, sentences of 20 years or more were obtained in just more than 40 percent of such cases, but only 5 percent of those were guilty pleas, or just more than a quarter of the number in the death penalty states.

### Claims that life without parole is cheaper are flawed

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty, http://www.wesleylowe.com/cp.html#contents

The $34,200 is conservative, if TIME Magazine's (2/7/94) research is accurate. TIME found that, nationwide, the average cell cost is $24,000/yr. and the maximum security cell cost is $75,000/yr. (as of12/95). Opponents claim that LWOP should replace the DP. Therefore, any cost calculations should be based specifically on cell costs for criminals who have committed the exact same category of offense - in other words, cost comparisons are valid only if you compare the costs of DP-equivalent LWOP cases to the cost of DP cases. The $34,200/yr. cell cost assumes that only 20% of the DP-equivalent LWOP cases would be in maximum security cost cells and that 80% of the DP-equivalent LWOP cases would be in average cost cells. A very conservative estimate. The $60,000/yr., for those on death row, assumes that such cells will average a cost equal to 80% of the $75,000/yr. for the most expensive maximum security cells. A very high estimate. Even though we are calculating a 75% greater cell cost for the DP than for equivalent LWOP cases, equivalent LWOP cases appear to be significantly more expensive, over time, than their DP counterparts. For years, opponents have improperly compared the cost of all LWOP cases to DP cases, when only the DP equivalent LWOP cases are relevant.

## AT Innocent Persons Executed

### Potential for saved lives outweighs risk of innocent executions

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty, http://www.wesleylowe.com/cp.html#contents

As for the penal system accidentally executing an innocent person, I must point out that in this imperfect world, nothing that is worth having comes without risk. After all, far, far more innocent lives have been taken by convicted murderers than the supposedly 23 innocents mistakenly executed this century. In fact, there is absolutely no evidence that the death penalty in this country has ever executed even ONE innocent in the past century! Also consider that thousands of American citizens are murdered each year by released and paroled criminals. These are the serious flaws in life sentences that abolitionists prefer to trivialize to nonexistence. There is no doubt whatsoever that keeping murderers alive is far, far more dangerous to innocents than putting them to death. One US Senate report stated this position this way: All that can be expected of...[human authorities] is that they take every reasonable precaution against the danger of error... If errors are...made, this is the necessary price that must be paid within a society which is made up of human beings.

### Risk of future murders justify use even if occasionally innocent

Wesley Lowe, Novelist, January 17, 2011, Pro Death Penalty, http://www.wesleylowe.com/cp.html#contents

For instance, abolitionists spend millions of dollars and countless man hours fighting the legal execution of dozens of our worst human rights violators per year under the guise that they are concerned about the innocents that might be executed by mistake, when they do nothing to eliminate the inhumane parole and probation release policies which result in the needless injury and slaughter of thousands of innocent people. This slaughter does not include violent crimes committed by repeat offenders who are released and who are not on "supervision". And where is the compassion in honoring the previous victim’s suffering and in protecting the human rights of future victims? Indeed, abolitionist actions show virtually no compassion for the victims of violent crime or concern for future victims, yet, they exhibit overwhelming support for those who violate our human rights and murder countless innocents each year. The only time assigning sanctity to innocent lives can be stomached is when they manipulate people into preserving murderers. They don't value innocent lives at all, they only refer to them to manipulate those who do. Indeed, their "regard" for innocents is nothing more than a self-righteous manipulative ploy. So don't be fooled by the guise of virtue they tend to don.

### **Need for punishment outweighs risk of innocent executions**

Ta-Nehisi, NY Times, June 22, 2011, The Haunting of Rick Perry <http://www.nytimes.com/2011/06/23/opinion/23coates.html>

The employment of lethal force is perhaps the greatest power afforded a state by its citizens. Thus the death penalty debate is ill-suited for those who would shrink from the implications of either its deployment or abrogation. I am opposed to the death penalty. But my opposition is tempered by the belief that Americans support capital punishment for real and substantial reasons. The unfortunate fact of humanity is that it tends to regularly birth butchers who think nothing of concealing their work beneath a seductive mask of victimhood